

ARTICLE I
THE COUNTY AND ITS GOVERNMENT

Section 1.01. Incorporation. The people of the county of Kauai are and shall continue to be a body politic and corporate in perpetuity under the name of "county of Kauai," referred to hereinafter as the "county."

Section 1.02. Geographical Limits. The islands of Kauai and Niihau and all other islands lying within three nautical miles off the shore thereof, and the waters adjacent thereto, shall constitute the county or Kauai with its county seat at Lihue.

Section 1.03. County Elections.

A. In general. County elections shall be conducted in accordance with the election laws of the State insofar as applicable, but all elective officers shall be elected by nonpartisan elections. Except as otherwise provided in this charter, such nonpartisan elections shall be held in conjunction with the primary and general elections of the applicable year in which the terms of the mayor, council members, or prosecuting attorney, respectively, end.

B. First nonpartisan election. To the extent possible, the first nonpartisan election shall be held in conjunction with the primary election of the applicable year.

1. Offices of the Mayor, Prosecuting Attorney and Council members to be elected by districts, if any. In the case of the offices of mayor, prosecuting attorney, or any council members to be elected by districts, any candidate receiving a majority of the votes cast for that office shall be elected. However, if there is only one candidate for each of said offices, such candidate shall be elected.

2. Office of At-Large Council Members. The candidates receiving the highest number of votes shall be elected to fill each vacant at-large council office provided the candidate or candidates receive at least thirty percent of all votes cast for all at-large council offices. In the event of a tie for the last remaining at-large council office the candidates receiving the same number of votes shall be placed on the ballot for the second nonpartisan election.

C. Second nonpartisan election. To the extent possible, the second nonpartisan election shall be held in conjunction with the general election for the applicable year.

1 . Offices of the Mayor, Prosecuting Attorney, and Council members to be elected by districts, if any. Unless a candidate for mayor, prosecuting attorney, or council members to be elected by district, if any, is elected in the first nonpartisan election, the

names of the two candidates receiving the highest number of votes for these offices in the first nonpartisan election shall be placed on the ballot for the second nonpartisan election. At the second nonpartisan election the candidates receiving the highest number of votes for mayor, prosecuting attorney and district council member, respectively, shall be elected.

2. Office of At-Large Council members.

a. If any at-large council office remains to be filled after the first nonpartisan election, two candidates for each vacant at-large council office shall be placed on the ballot. The names of the candidates receiving the highest number of votes cast in the first nonpartisan election, other than the name of any candidate elected after the first nonpartisan election, shall be placed on the ballot until a sufficient number of candidates are on the ballot as provided in this subsection. At the second nonpartisan election, the candidates receiving the highest number of votes for each vacant at-large office shall be elected.

b. In the event of a tie vote in the second nonpartisan election, the winner shall be determined by chance by a method chosen by the county clerk.

D . In any subsequent publication of the foregoing sections the term "first nonpartisan election" and "second nonpartisan election" may be changed to "primary election" and "general election", respectively."

(Amended 1996)

ARTICLE II

POWERS OF THE COUNTY

Section 2.01. Powers. To promote the general welfare and the safety, health, peace, good order, comfort and morals of its inhabitants, the county shall have and may exercise all powers necessary for local self-government, and any additional powers and authority which may hereafter be granted to it, except as restricted by laws of this State. The enumeration or express powers in this charter shall not be deemed to be exclusive. In addition to the express powers enumerated herein of implied thereby, it is intended that the county shall have and may exercise all powers it would be competent for this charter to enumerate expressly.

Section 2.02. Exercise of Powers. All powers of the county shall be carried into execution as provided by this charter, or, if the charter makes no provision, as provided by ordinance of the county council.

ARTICLE III
COUNTY COUNCIL

Section 3.01. Legislative Power. The legislative power of the county shall be vested in and exercised by the county council, except as otherwise provided by this charter.

Section 3.02. Composition. There shall be a council of seven members elected at-large.

Section 3.03. Terms. The terms of office of councilmembers shall be for two years beginning at twelve o'clock meridian on the first working day of December following their election. (Amended 1980, 1984)

Section 3.04. Qualifications.

A. To be eligible for the council, a person must be a citizen of the United States and must have been a duly qualified elector of the county for at least two years immediately preceding his election or appointment.

B. Any councilman who removes his residence from the county or is convicted of a felony shall immediately forfeit his office.

C. The council shall be the judge of the qualifications of its members and for that purpose shall have power to subpoena witnesses, take testimony and require the production of records. Decisions made by the council in the exercise of the powers granted in this subsection shall be subject to review by the Fifth Circuit Court of the State of Hawaii.

Section 3.05. Vacancy in Office. In the event a vacancy occurs in the council, the remaining members of the council shall appoint a successor with the required qualifications to fill the vacancy for the unexpired term. If the council is unable to fill a vacancy within (30) days after its occurrence, the mayor shall make the appointment to such vacancy. The foregoing provisions shall apply in the event a person elected as councilman dies before taking office; provided, however, that the vacancy shall be filled by the newly elected council within thirty (30) days after the beginning of the new term.

Section 3.06 Compensation. The salary of each councilmember shall be as established by the Salary Commission. (Amended 1988)

Section 3.07. Organization of Council; Officers; Rules; Employees.

A. The council shall meet in the council room at the county building or in the Kauai War Memorial Convention Hall for its organization promptly after its inauguration and swearing-in ceremony

at which time it shall elect one of its members as chairman and presiding officer of the council. Until such time as the chairman is elected, the mayor shall preside at the council meetings, provided that the mayor shall not have a vote. The council shall also elect one of its members as vice-chairman who shall act as the presiding officer in the event of the chairman's absence. The council shall appoint a presiding officer pro tempore from its members in the event of the absence of both the chairman and vice-chairman. A majority of the entire membership of the council shall constitute a quorum and, except as otherwise provided, the affirmative vote of a majority of the entire membership shall be necessary to take any action. (Amended 1984)

B. The council shall adopt such rules as it may deem necessary for the organization of committees and the transaction of its business.

C. The council shall keep a journal of its proceedings.

D. The council may, upon an affirmative vote of at least two-thirds of its entire membership, suspend without pay for not more than one month any member for disorderly or contemptuous behavior in its presence. The presiding officer or the council by a majority vote may expel any other person who is guilty of disorderly, contemptuous or improper conduct at any meeting.

E. The council shall meet regularly at least twice in every month at such times as the council may prescribe by rule. Special meetings may be held on the call of the mayor, chairman or by five or more members. With the exception of deliberations relating to confirmation of appointees, or consultations with the county attorney on claims, all council and council committee meetings shall be open to the public.

F. Council Staff. The council may appoint the necessary personnel for the transaction of its business, and such appointments shall be subject to the civil service and classification requirements. The chairman of the council shall be the administrative officer of the staff employees.

Section 3.08. Mayor May Appear Before Council. The mayor may propose in writing any motion, resolution or ordinance, or amendments thereto, but shall have no right to vote thereon.

Section 3.09. Eminent Domain. The council shall by resolution determine and declare the necessity of taking property for public purposes, describing the property and stating the uses to which it shall be devoted.

Section 3.10. Annual Budget and Capital Program. The council shall

enact an annual budget ordinance, which shall include both the operational and capital expenditures for the fiscal year and the method of financing same. The council shall provide sufficient revenues to assure a balanced budget.

Section 3.11 Adoption of Pay Plan. The Council by ordinance shall fix the salaries of all department heads, officers (excluding councilmembers), and employees who are exempt from civil service. All other officers and employees shall be classified and paid in accordance with law. (Amended 1984, 1988)

Section 3.12. Audit.

A. Financial Audit. At least once every two years and at any other time as may be deemed necessary, the council shall cause an independent audit of all county funds and accounts to be made by a certified public accountant or firm of certified public accountants. The scope of the audit shall be in accordance with the terms of a written contract to be signed by the chairman which shall provide for the completion of the audit within a reasonable time. If the state makes such an audit, the council may accept it as satisfying the requirements of this section. The audit shall be matter of public record.

B. Performance Audit. To ensure and determine whether government services are being efficiently, effectively, and economically delivered, the council may at any time provide for a performance audit of any or all of the offices, agencies, departments, programs, and operations for which the county is responsible. The council may exercise its authority to conduct performance audits through the hiring of a qualified in-house auditor or through the hiring of a qualified auditor or both. The scope of the audit shall be in accordance with the terms of an assignment referred to the office of the county clerk by the county council or a written contract to be approved by the council and signed by the presiding officer of the council, but may include the following activities:

(1) Examination and testing of county offices', agencies' programs' and departments' implementation processes to determine whether the laws, policies and programs of the county are being carried out in the most effective, efficient and economical manner.

(2) Examination and testing of the internal control systems of offices, agencies, programs, operations and departments to ensure that such systems are properly designed to safeguard public assets against loss from waste, fraud, error, to promote efficient operations, and to encourage adherence to prescribed management policies.

Said assignment or contract shall encourage recommendations for changes in the organization, management and processes which will produce greater efficiency and effectiveness in meeting the objectives of the programs or operations carried out by the respective county agencies, departments, offices, programs, and operations, and shall provide for the completion of the audit within one calendar year. A copy of the audit report shall be filed with the county clerk and shall be public record.

(Amended 2000)

Section 3.13. Creation of a General Debt.

A. The council by the affirmative vote of at least five members may authorize the issuance of general obligation bonds in accordance with the Constitution and laws of the State of Hawaii.

B. Each bond authorization shall specify the purpose for which moneys are to be borrowed and the maximum amount of bonds to be issued for that purpose.

C. Notwithstanding any limitation contained in this charter. the council may accept and receive participating or nonparticipating federal and state loans for public improvement projects or other purposes, the aggregate of which. together with any bonded indebtedness outstanding, shall not at any time exceed the total bonded indebtedness authorized by the Constitution of the State of Hawaii.

D. The council may provide for the refunding of general obligation bonds.

Section 3.14. Creation of Special Assessment Debt. The council may authorize the issuance of improvement bonds to finance assessable public improvements in the manner provided by law.

Section 3.15. Revenue Bond Indebtedness. The council may authorize the issuance of revenue bonds for the purpose of initiating, constructing, acquiring, extending, replacing or otherwise improving any revenue-producing facility as provided by law.

Section 3.16. Temporary Borrowing.

A. The council may borrow money in any fiscal year in anticipation of revenues to be derived from taxes for that year, and for any of the purposes to which the revenues are appropriated. No such borrowing shall be in excess of twenty-five per cent (25%) of the amount of the uncollected taxes of that year.

B. When any warrants are presented to the county for payment and the same are not paid for lack of funds, the director of finance shall issue a warrant note, equal in amount to the face value of the warrant or warrants so presented for payment. The warrant note shall be in a form and shall be due at a date prescribed by the director of finance. It shall bear interest at the lowest obtainable rate. The notes shall be a first charge on the moneys of any fund against which the warrants are issued.

C. The council upon recommendation of the mayor may authorize the director of finance to obtain temporary loans from the State.

Section 3.17. Investigation. The council or any authorized committee thereof shall have the power to conduct investigations of the operation of any agency or function of the county and any subject upon which the council may legislate. In investigations, the presiding officer shall have the right to administer oaths and in the name of the council to subpoena witnesses and compel the production of books and papers pertinent thereto. If any person subpoenaed as a witness, or to produce any books or papers called for by the process of the council or committee shall fail or refuse to respond thereto. the circuit court upon request of the council shall have power to compel obedience to any process of the council and require such witness to answer questions put to him as aforesaid, and to punish as a contempt of the court, any refusal to comply therewith without good cause shown therefor.

False swearing by any witness shall constitute perjury and be punished as such, and whenever the council is satisfied that a witness has sworn falsely in any hearing or investigation, it shall report same to the county attorney for prosecution. In any investigation which concerns the alleged gross misconduct or alleged criminal action on the part of any individual, such individual shall have the right to be represented by counsel, the right of reasonable cross-examination of witnesses and the right to process of the council to compel the attendance of witnesses in his behalf.

Section 3.18. Restrictions on County Council and Council members. The council and its members shall not interfere with the administrative processes delegated to the mayor.

Except for the purpose of investigative inquiries under Section 3.17, the council or its members, in dealing with county employees, or with county officers who are subjected to the direction and supervision of the mayor, shall deal solely through the mayor. and neither the council nor its members shall give orders to any such employee or officer either publicly or privately. Any willful violation of the provisions of this section by a member of the council shall be sufficient grounds for an action for his removal from office.

ARTICLE IV

ORDINANCES AND RESOLUTIONS

Section 4.01. Actions of the Council. Every legislative act of the council shall be by ordinance except as otherwise provided. Non-legislative acts of the council may be by resolution. Transfer of funds within the same department, whether in the operating budget or capital budget, may be effected by resolution. The enacting clause of every ordinance shall be "Be it ordained by the council of the county of Kauai:" and the enacting clause of every resolution shall be "Be it resolved by the council of the county of Kauai:"

Section 4.02. Introduction, Consideration and Passage of Ordinances and Resolutions.

A. Every proposed ordinance shall be initiated as a bill and shall be passed only after two readings on separate days. The vote on final passage shall be taken by ayes and noes and entered in the journal. Full readings of bill may be waived by vote or a majority of the council.

B. Every ordinance shall embrace but one subject, which shall be expressed in its title.

C. No bill shall be so amended as to change its original purpose. Every bill, as amended, shall be in writing before final passage.

D. When a bill fails to pass on final reading and a motion is made to reconsider, the vote on such motion shall not be acted upon before the expiration of twenty-four (24) hours.

E. Except as otherwise provided in this charter, resolutions may be adopted on one reading. The reading shall be in full except by a majority consent of all councilmen present, in which case the reading may be by title only.

F. Bills embracing (1) the fixing of special assessments for the cost or improvements, (2) the appropriation of public funds or the authorization of the issuance of general obligation bonds or (3) the imposition of a duty or penalty on any person, shall pass first reading by ayes and noes, and digests of such bills shall be advertised once in a newspaper of general circulation in the county, at least seven days before final reading by the council. Copies of such bills shall be filed for use and examination by the public in the office of the county clerk at least seven days prior to the final reading thereof.

G. Upon the request of a majority of the council, a public hearing shall be held on any proposed ordinance or resolution. Notice of the public hearing shall be by publication in a newspaper of general circulation in the county, and the public hearing shall be held not earlier than seven days prior to the final reading on the proposed ordinance or resolution.

H. All ordinances shall be promptly advertised once by title in a newspaper of general circulation in the county with the ayes and noes after enactment. Unless otherwise provided, resolutions need not be advertised either before or after adoption.

I. Resolution authorizing proceedings in eminent domain shall

not be acted upon on the date of introduction, but shall be laid over for at least fourteen (14) days before adoption. Such resolutions shall be advertised once in a newspaper of general circulation in the county at least fourteen (14) days before adoption by the council. Copies of such resolutions shall be filed for use and examination by the public in the office of the county clerk at least fourteen (14) days prior to the adoption thereof. Upon adoption, every such resolution shall be presented to the mayor, and he may approve or disapprove it pursuant to applicable provisions governing the approval or disapproval of bills.

J. The council may adopt resolutions for the purpose of marking roads or regulating and adjusting the movement of traffic and pedestrians in connection with traffic ordinances, and such resolutions need not be published; provided, that no person shall be punished for violating such resolutions so adopted unless the regulation, mark or adjustment sought to be effected is clearly indicated in the places where effective by legible markers or signs.

K. Emergency Ordinances. To meet a public emergency affecting life, health or property, the county council may adopt one or more emergency ordinances, but such ordinances may not be used to levy taxes, regulate the rate charged by any public utility for its services, or authorize the borrowing of money.

(1) Every emergency ordinance shall be plainly designated as such and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing the claimed emergency in clear and specific terms. Except as thus indicated, it shall be introduced in the form and manner prescribed for ordinances generally. An emergency ordinance may be considered and may be adopted with or without amendment or rejected at the meeting at which it is introduced. The affirmative vote of all council members present, or the affirmative vote of three-fourths of those elected, shall be required for adoption of such an ordinance. After adoption of an emergency ordinance, the council shall cause it to be printed and published as prescribed for other adopted ordinances.

(2) Every emergency ordinance, including any amendments made thereto after its adoption, shall automatically stand repealed as of the sixty-first (61st) day following the date on which it was adopted.

Section 4.03. Submission of Ordinances to the Mayor.

A. Every bill which has passed the council and has been duly authenticated by the county clerk and the presiding officer, shall be presented to the mayor for his approval. If he approves it, he shall sign it and it shall then become an ordinance. If he disapproves it, he shall specify his objections thereto in writing and return the

bill to the county clerk with his objections within ten days, excluding Saturdays, Sundays and holidays after receiving it. If he does not return it with his disapproval within that time, it shall take effect as if he had signed it. The objections of the mayor shall be entered in the journal of the council and the council may, after five and within thirty (30) days after the bill has been so returned, reconsider the vote upon the bill. If the bill, upon reconsideration, is again passed by the affirmative vote of five members of the council, the presiding officer shall verify that fact on the bill and when so certified, the bill shall then become an ordinance with like effect as if it had been signed by the mayor. If the bill fails to receive the vote of at least five members of the council. it shall be deemed void.

B. If any bill is presented to the mayor appropriating money, he may veto any item or items or appropriations therefor by striking out or reducing the same. In case of such a veto, the mayor shall append to the bill at the time of signing it a statement of the item or items or portion or portions thereof to which he objects and the reasons therefor. Each item so vetoed may be reconsidered by the council in the same manner as bills which have been disapproved by the mayor.

Section 4.04. Amendment, Revision or Repeal: Adoption of Codes by Reference.

A. No ordinance shall be amended, revised or repealed by the council except by ordinance. No resolution shall be amended, revised or repealed except by resolution, but a resolution may be superseded by a subsequent ordinance.

B. Any ordinance or resolution may be repealed by reference to its number or section number. Revisions or amendments may be made in the same manner but the same, or the section, subsection or paragraph thereof, revised or amended, shall be re-enacted at length as revised or amended; but when the amendment consists of adding new sections, subsections, paragraphs, or substituting a word, term or number, it shall be sufficient to enact the new matter alone if reference thereto is made in the title.

C. Any code or portions thereof may be adopted by reference thereto by the enactment of an ordinance for that purpose. The code, or portions, need not be published in the manner required for ordinances, but not less than three copies thereof shall be filed for use and examination by the public in the office of the county clerk not less than fifteen (15) days prior to the final reading thereof. and notice of the availability of said copies shall be published by the clerk.

Section 4.05. Codification of Ordinances.

A. Within two years of the effective date of this charter, the council shall cause a code to be prepared and published, containing all of the ordinances of the county which are appropriate for continuation as law. Such a code shall be prepared and published at intervals of every ten years thereafter. The code may be prepared by the county attorney, or the council may contract for its preparation by professional persons or organizations experienced in the revision and codification of ordinances or statutes.

B. The code may be adopted by reference by the passage of an ordinance for that purpose. Copies of the code shall be made available to the public at a reasonable price prior to and after its adoption.

C. All proposed ordinances of general application introduced after the approval of the code shall be adopted as amendments of or additions to the code and by reference thereto.

ARTICLE V

COUNTY CLERK

Section 5.01. Powers, Duties and Functions,

A. The council shall appoint and may remove and shall fix the salary of the county clerk.

B. The county clerk shall:

(1) Be the clerk of the council.

(2) Take charge of safety keep and dispose of all books, papers and records which may properly be filed in his office and keep in separate files all ordinances, resolutions and regulations and cumulative indices of the same, or exact copies thereof, enacted or adopted by the council.

(3) Have custody of the county seal, which shall be used to authenticate all official papers and instruments requiring execution or certification by the county clerk in the exercise of his office.

(4) Conduct all elections held within the county pursuant to this charter, the laws of the State of Hawaii or the United States of America.

(5) Perform other functions as required by this charter, by law or assigned by the council.

C. The county clerk may appoint the necessary staff for which appropriations have been made by the council with the same powers

with respect to the personnel of his office as the department heads in the executive branch.

ARTICLE VI
EXECUTIVE BRANCH

Section 6.01. Executive Power. The executive power of the county shall be vested in and exercised by the executive branch, which shall be headed by the mayor.

Section 6.02. Organization. Except as otherwise provided, within six months after the effective date of this charter, the mayor shall recommend and the council shall by ordinance adopt an administrative code providing for a complete plan of administrative organization of the executive agencies of the county government consistent with the provisions of this charter. Upon recommendation of the mayor, the council may, by a vote of five members, change, abolish, combine or re-arrange the executive agencies of county government.

New functions may be assigned by the mayor to existing agencies, but to the extent that this is not practicable, the council by a vote of five members may upon the recommendation of the mayor create additional departments.

Section 6.03. Creation of Advisory Committees. The mayor or department heads, with the approval of the mayor, may each appoint advisory committees. Such advisory committees shall not exist beyond the term of office of the appointing authority. The members of advisory committees shall not be paid, but their authorized expenses shall be paid from appropriations to the appointing authority. Advisory committees shall have no employees but each appointing authority shall cause employees of the department to furnish such services as may be needed by the committees.

Section 6.04. Appointment and Removal of Officers and Employees.

A. The administrative assistant to the mayor and all department heads shall be appointed and may be removed by the mayor, except as otherwise provided by this charter.

B. Department heads may appoint the necessary staff for which appropriations have been made by the council. Department heads may also suspend, discharge or discipline subordinate employees as may be necessary for the proper conduct of the departments and subject to the classification and civil service laws.

Section 6.05. Powers and Duties of Heads of Executive Agencies.

A. Subject to the provisions of this charter and applicable regulations adopted thereunder, the heads of the executive agencies

of the county government are empowered to assign and reassign duties, supervise, manage, and control all employees and shall have the power and duty to make all personnel actions as provided by law.

B. Each head of an executive agency of county government may, subject to the approval of the mayor, prescribe such rules as are necessary for the organization and internal administration of the respective executive agencies.

ARTICLE VII

MAYOR

Section 7.01. Election and Term of Office. The electors of the county shall elect a mayor whose term of office shall be four years beginning at twelve o'clock meridian on the first working day of December following his election. No person shall serve as mayor for more than two consecutive full terms.

The Four year term for mayor shall apply commencing with the 1990 General Election. (Amended 1980, 1984, 1988)

Section 7.02. Qualifications. Any citizen of the United States not less than thirty (30) years of age who has been a duly qualified resident elector of the county for at least three years immediately prior to his election shall be eligible for election to the office of mayor. Upon removal of his residence from the county, the mayor shall by that fact be deemed to have vacated his office. (Amended 1980)

Section 7.03. Compensation. The salary of the mayor shall be \$19,000.00 per annum which shall be subject to change by the council. The salary of any incumbent shall be reduced only in the event that a general reduction in salaries of all county officers and employees is simultaneously effected.

Section 7.04. Contingency Fund. The council shall provide in the annual budget a contingent fund of not less than \$2,500.00 to be expended by the mayor for such public purposes as he may deem proper.

Section 7.05. Powers, Duties and Functions. The mayor shall be the chief executive officer of the county. He shall have the power to:

A. Except as otherwise provided, exercise direct supervision over all departments and coordinate all administrative activities and see that they are honestly, efficiently and lawfully conducted.

B. Appoint the necessary members of his staff and other employees and officers whose appointments are not provided herein.

C. Create positions authorized by the council and for which

appropriations have been made, or abolish positions, but a monthly report of such actions shall be made to the council.

D. Make temporary transfers of positions between departments or between subdivisions of departments.

E. Recommend to the council for its approval a pay plan for all department heads, officers and employees who are exempt from civil service and the position classification plan.

F. Submit operating and capital budgets, together with a capital program annually to the council for its consideration and adoption.

G. Sign instruments requiring execution by the county, including deeds and other conveyances, except those which the director of finance or other officer is authorized by this charter, ordinance or resolution to sign.

H. Present messages or information to the council which in his opinion are necessary or expedient.

I. In addition to the annual report, make periodic reports informing the public as to county policies, programs and operations.

J. Approve or veto ordinances and resolutions pertaining to eminent domain proceedings.

K. Have a voice but no vote in the proceedings of all boards and commissions.

L. Enforce the provisions of this charter, the ordinances of the county and all applicable laws.

M. Exercise such other powers and perform such other duties as may be prescribed by this charter or by ordinance.

Section 7.06. Vacancy in Office

A. In the event of a vacancy in the office of the mayor, the council shall select, by majority vote, one of its members as mayor to serve until the next general election and assumption of office in December by the person elected mayor. The vacancy in the council shall be filled as provided for in Article III, Section 3.05 of the charter. In the event the vacancy occurs prior to the mid-term election, the person elected mayor in the general election shall serve only for the unexpired term of the mayor elected in the prior election. In the event the vacancy occurs later than three (3) days prior to the closing date for filing of nomination papers for the mid-term election, the mayor selected by the council shall continue to serve for the remainder of the term of the person he succeeded.

The foregoing provisions shall also apply in the event the person elected as mayor dies before taking office. (Amended 1980)

B. During the temporary absence from the county or temporary disability of the mayor, or in case of a vacancy in the office of the mayor, until a new mayor is appointed or elected, the administrative assistant shall act as mayor. In the event both the mayor and the administrative assistant are temporarily absent or disabled, the finance director shall act as mayor during said period.

(1) The mayor shall appoint and may remove an administrative assistant whose qualification shall be the same for the position of mayor. The salary for the administrative assistant shall be fixed by ordinance. The administrative assistant shall serve as the mayor's principal administrative aide.

C. In the event the person elected as mayor dies before taking office, the person serving as administrative assistant at the termination of the prior term shall continue to serve as acting mayor until a new mayor is elected.

ARTICLE VIII COUNTY ATTORNEY

Section 8.01. Organization. There shall be an office of the county attorney which shall be headed by the county attorney.

Section 8.02. Appointment and Removal. The county attorney shall be appointed and may be removed by the mayor, with the approval of the council.

Section 8.03. Qualifications. The county attorney shall be an attorney licensed to practice and in good standing before the supreme court of the State of Hawaii and shall have engaged in the practice of law in the State for at least three years.

Section 8.04. Powers, Duties and Functions. The county attorney shall be the chief legal adviser and legal representative of all agencies, including the council, and of all officers and employees in matters relating to their official powers and duties, and he shall represent the county in all legal proceedings. He shall perform all other services incident to his office as may be required by law.

Section 8.05. Deputy County Attorneys. The county attorney shall have the power to appoint such deputy county attorneys and necessary staff as shall be authorized by the council and within the appropriation made therefor. Such deputies shall serve at the pleasure of the county attorney.

Section 8.06. Special Counsel. The council may, by vote of five members, authorize the employment of special counsel for any special

matter necessitating such employment. Any such authorization shall specify the compensation, if any, to be paid for said services.

Section 8.07. Service of Legal Process. Legal process against the county shall be served upon the county attorney or any of his deputies.

ARTICLE IX PUBLIC DEFENDER

Section 9.01. Counsel for Defense. Any person accused of any felony or misdemeanor under the laws of the State or the county shall be entitled to representation or assistance by counsel. The council may by ordinance establish a system to provide counsel for the defense of any person accused of any crime who is financially unable to afford his own counsel.

ARTICLE IXA PROSECUTING ATTORNEY

Section 9A.01. Election and Term of Office. The electors of the county shall elect a prosecuting attorney, whose term of office shall be four years beginning at twelve o'clock meridian on the first working day of December following his election. (Amended 1972, 1980, 1984)

Section 9A.02. Qualifications. The prosecuting attorney shall be an attorney licensed to practice and in good standing before the Supreme Court of the State of Hawaii and shall have engaged in the practice of law in the State for at least three years. He shall also have been a duly qualified elector of the county for at least one year immediately preceding his election. (Amended 1972)

Section 9A.03. Powers, Duties and Functions. The prosecuting attorney shall:

A. Attend all courts in the county and conduct on behalf of the people all prosecutions therein for offenses against the laws of the State and the ordinances and regulations of the county.

B. Prosecute offenses against the laws of the State under the authority of the Attorney General of the State.

C. Appear in every criminal case where there is a change of venue from the courts in the county and prosecute the same in any jurisdiction to which the same is changed or removed. The expense of such proceeding shall be paid by the county.

D. Institute proceedings, or direct the chief of police to do so, before the district judge for the arrest of persons charged with

or reasonably suspected of public offenses, when he has information that any such offenses have been committed, and for that purpose take charge of criminal cases before the district judge, either in person or by a deputy or by such other prosecuting officer as he shall designate.

E. Draw all indictments and attend before and give advice to the grand jury whenever cases are presented to it for its consideration. Nothing herein contained shall prevent the conduct of proceedings by private counsel before all courts of the State under the direction on the prosecuting attorney. (Amended 1972)

Section 9A.04. Staff. The prosecuting attorney may appoint deputies, investigators, and other necessary staff. The deputy who is designated as first deputy shall, during the temporary absence or disability of the prosecuting attorney, assume the power and perform the duties of the prosecuting attorney. (Amended 1972)

Section 9A.05. Vacancy in Office. A vacancy in the office of prosecuting attorney shall be filled in the following manner:

A. if the unexpired term is less than a year, the first deputy shall act as prosecuting attorney. If the position of first deputy is vacant or if the first deputy is unable to so act, the mayor with the approval of the council shall fill the vacancy by appointment of a person with requisite qualifications within thirty days after the occurrence of the vacancy.

B. If the unexpired term is for eighteen (18) months or more, or in the event the person elected as prosecutor dies before taking office, or is unable to qualify, then the vacancy shall be filled by a special primary election and a special general election, patterned after the primary and general election laws of the State, insofar as applicable. The special primary election shall be called by the council and held within forty-five (45) days after the occurrence of the vacancy. The special general election shall be held thirty (30) days after the special primary election. Pending a special election, the first deputy shall act as prosecuting attorney. (Amended 1972)

ARTICLE X

DEPARTMENT OF FINANCE

Section 10.01. Organization. There shall be a department of finance consisting of the director of finance and the necessary staff.

Section 10.02. Appointment and Removal of Director of Finance. The director of finance shall be appointed and may be removed by the mayor.

Section 10.03. Qualifications. The director of finance shall have

had a minimum of five years of training or experience in fiscal management or accounting, at least three years of which shall have been in a responsible administrative capacity.

Section 10.04. Powers, Duties and Functions. The director of finance shall be the chief accounting, fiscal and budget officer of the county and shall:

A. Prepare the annual budget ordinance under the direction of the mayor.

B. Supervise and be responsible for the disbursement of all moneys and have control over all expenditures to ensure that budget appropriations are not exceeded.

C. Maintain a general accounting system for the county government and each of its offices, departments and agencies; keep books for and exercise financial budgetary control over each office, department and agency, except as otherwise provided by this charter or by law; audit the books and accounts of all county offices, departments and agencies authorized or required by this charter or by law to maintain and keep books.

D. Prepare for the mayor for submission to the council a quarterly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the county and a general projection of financial conditions for the remainder of the fiscal year.

E. Prepare for the mayor at the end or each fiscal year a complete financial statement and report.

F. Maintain the treasury and deposit moneys belonging to the county in depositories authorized by law.

G. Be responsible for the management of county funds, including the short-term investment of cash which is in excess of immediate requirements.

H. Contract for services of independent contractors, purchase materials, supplies and equipment, and permit disbursements to be made pursuant to the provisions under this charter.

I. Be responsible for issuing and selling, paying interest on and redeeming bonds of the county.

J. Prepare and issue warrants.

K. Purchase, lease, rent, or otherwise acquire or secure the use of real or personal property and manage, operate, encumber or dispose

of the same as the interest of the county may require.

L. Rent or lease county property and award concessions pursuant to policies established by the council, except property controlled by the board of water supply.

M. Collect all moneys due the county or for the collection of which the county is responsible, and receive all moneys receivable by the county from any source.

N. Maintain an inventory of all lands, structures, transmission and distribution systems, streets and roadways and other permanent improvements owned, leased, rented or controlled by the county.

O. Maintain an inventory of all equipment owned or controlled by the county.

P. Review assessment rolls for assessable public improvements prior to approval by the council and issue bills therefor after such approval has been given.

Q. Have custody of all official bonds, except the bond of the director of finance, which shall be in the custody of the county clerk.

R. Provide a continuous internal audit and program of efficiency studies of all county activities and county departments and provide an annual report of such studies to the council. (Amended 2000)

S. Prepare and process applications for state, federal or other funds on behalf of the county.

T. Operate and manage the real property tax functions as established by ordinance. (Amended 1980)

U. Perform such other duties and functions prescribed by law or assigned by the mayor.

Section 10.05. Cash Count. The director of finance or a designated assistant and the county clerk shall jointly at least once in every three months and at such other times as may be deemed necessary verify the amount of money in the treasury and make a certified report showing:

A. The amount or money that should be in the treasury.

B. The amount and kind of money actually therein.

A signed copy of such report shall be filed with the mayor and the council.

ARTICLE XI
POLICE DEPARTMENT

Section 11.01. Organization. There shall be a police department consisting of a police commission, a chief of police and the necessary staff. (Amended 1984)

Section 11.02. Police Commission. The police commission shall consist of five members appointed by the mayor with the approval of the council. The commission shall hold regular public meetings at a designated time and place. (Amended 1984)

Section 11.03. General Powers of the Commission. The police commission shall:

A. Adopt such rules as it may consider necessary for the conduct of its business and the regulations of matters relating to the goals and aims of the department.

B. Review the annual budget prepared by the chief of police and may make recommendations thereon to the mayor.

C. Receive, consider and investigate charges brought by the public against the conduct of the department or any of its members and submit a written report of its findings to the chief of police within ninety days.

D. Refer all matters relating to administration of the department to the chief of police.

E. Adopt such rules to regulate political activities of the members of the police department. (Amended 1984)

Section 11.04. Chief of Police. The chief of police shall be appointed by the police commission. He may be removed by the police commission only after being given a written statement of the charges against him and a hearing before the commission. The chief of police shall have had a minimum of five years of training and experience in law enforcement, at least three years of which shall be in a responsible, administrative capacity. He shall make such reports from time to time as the commission shall require, and shall annually make a report to the commission of the state of affairs and condition of the police department. (Amended 1984)

Section 11.05. Powers, Duties and Functions. The chief of police shall be the administrative head of the police department and shall:

A. Be responsible for the preservation of the public peace, prevention of crime, detection and arrest of offenders against the

law, preservation of life, protection of the rights of persons and property, and enforcement and prevention or violations of law.

B. Train, equip, maintain and supervise the force of police officers.

C. Be responsible for traffic safety and traffic safety education.

D. Serve process both in civil and criminal proceedings.

E. Perform such other duties as may be required by law or as may be assigned by the commission.

F. Promulgate rules and regulations necessary for the organization and internal administration of the department. (Amended 1984)

Section 11.06. Discipline and Removal. The dismissal, suspension, or demotion of any police officer or employee in the police department shall be under procedures set forth by civil service laws and regulations. (Amended 1984)

Section 11.07 Appeals. Appeals from personnel actions shall be in accordance with the applicable collective bargaining agreement executed pursuant to the provisions presently contained in Chapters 76 and 89 or the Hawaii Revised Statutes. (Amended 1984)

ARTICLE XII

FIRE DEPARTMENT

Section 12.01. Organization. There shall be a fire department consisting of a fire chief and the necessary staff.

Section 12.02. Fire Chief. The fire chief shall be appointed and may be removed by the mayor. He shall have had a minimum of five years of training and experience in fire prevention and control in private industry or government service, at least three years of which shall have been in a responsible administrative capacity. (Amended 1980)

Section 12.03 Powers, Duties, and Functions. The fire chief shall be the administrative head of the fire department and shall:

A. Appoint, train, equip, supervise and discipline the personnel of the fire department in accordance with department rules and civil service regulations.

B. Provide an effective program and leadership for county-wide fire prevention, fire control and rescue operations.

C. Control, manage and account for all property in the custody of the fire department.

D. Execute such other powers and duties as may be prescribed by law or assigned by the mayor.

ARTICLE XIII
DEPARTMENT OF PUBLIC WORKS

Section 13.01. Organization. There shall be a department of Public works consisting of a county engineer and the necessary staff.

Section 13.02. County Engineer. The county engineer shall be appointed and may be removed by the mayor. He shall be a registered engineer and shall have had a minimum of five years of training and experience in an engineering position, at least three years of which shall have been in a responsible administrative capacity. (Amended 1980)

Section 13.03. Powers, Duties and Functions. The county engineer shall be responsible for the administration of the department of public works and shall:

A. Perform all engineering, designing, planning and construction of all public facilities and improvements undertaken by the county.

B. Maintain, repair and upkeep all county facilities and improvements.

C. Collect and dispose garbage and refuse.

D. Examine and enforce the construction requirements and standards of all public and private construction and improvements in accordance with the building code, subdivision code or such other regulations as may be in effect in the county.

E. Design, install, inspect, maintain and repair all traffic signs, traffic control facilities and devices and street lighting system.

F. Perform such other duties as may be assigned by the mayor or prescribed by law.

ARTICLE XIV
PLANNING DEPARTMENT

Section 14.01. Organization. There shall be a planning department consisting of a planning commission, a planning director and the necessary staff.

Section 14.02. Planning Commission Organization. The planning commission shall consist of seven members. At least two members shall have knowledge and awareness of environmental concerns by way of the person's education, training, occupation or experience; at least two members shall have knowledge and awareness of business concerns by way of the person's education, training, occupation, or experience; and at least two members shall have knowledge and awareness of organized labor concerns by way of the person's education, training, occupation, or experience.

This amendment shall take effect upon its approval, and apply to appointments or reappointments made thereafter. All planning commission members presently serving may continue to serve their remaining terms notwithstanding this amendment, The mayor shall phase in this requirement in any order the mayor deems appropriate as terms expire or vacancies arise. At the time of appointment, the mayor shall declare which interest the appointee represents. (Amended 1992)

Section 14.03. Duties and Functions of the Planning Commission. The planning commission shall:

A. Advise the mayor, council and planning director in matters concerning the planning program for the county.

B. Review the general plan and development plans and modifications thereof developed and recommended by the planning director. The commission shall transmit such plans with its recommendations thereon, through the mayor, to the council for its consideration and action.

C. Review zoning and subdivision ordinances and amendments thereto developed and recommended by the planning director. The commission shall transmit such ordinances with its recommendations thereon, through the mayor, to the council for its consideration and action. The commission shall recommend approval or rejection of such ordinances in whole or in part and with or without modifications.

D. Hear and determine petitions for varying the application of the zoning ordinance with respect to a specific parcel of land and may grant such a variance pursuant to variance provisions established by the council in the zoning ordinance.

E. Adopt regulations having the force and effect of law pertaining to the responsibilities of the department.

F. Prepare a capital improvement program with the advice of the mayor, complementing and reflecting the State and Federal Programs for the County.

G. Perform such other related duties as may be necessary to

fulfill its responsibilities under this charter.

Section 14.04 Director. The planning director shall be appointed and may be removed by the commission. He shall have a college degree in either planning, engineering, architecture, or he shall have had a minimum of five years of training and experience in a responsible planning position, at least three years of which shall have been in an administrative capacity in charge of major planning activities. He shall be the administrative head of the department.

Section 14.05 Powers, Duties and Functions of the Director. The planning director shall:

A. Prepare a general plan and development plans for the improvement and development of the county.

B. Be charged with the administration of the zoning and subdivision ordinance and the regulations adopted thereunder.

C. Prepare zoning and subdivision ordinances, zoning maps and regulations and any amendments or modifications thereto for the council.

D. Consolidate the lists of proposed capital improvements contemplated by the several departments in the order of their priority for the county.

E. Advise the mayor, council and planning commission on matters concerning the planning programs of the county.

Section 14.06. General Plan. The council shall adopt and may, from time to time, modify a general plan setting forth in graphic and textual form policies to govern the future physical development of the county. Such plan may cover the entire county and all of its functions and services or may consist of a combination of plans covering specific functions and services or specific geographic areas which together cover the entire county and all its functions and services. The general plan shall serve as a guide to all future council action concerning land use and development regulations, urban renewal programs and expenditures for capital improvements.

Section 14.07 Development Plan. 'Development plan' means a relatively detailed scheme for the replacement or use of specific facilities within the framework of and implements the general plan.

Section 14.08. Adoption of the General Plan and Development Plans. The council shall adopt the general plan or any development plan by ordinance. The general plan and all development plans shall be kept on file in the office of the planning department. The current general plan and all development plans and all amendments thereto adopted by resolution prior to January 2, 1977, are hereby ratified without further action of the council. (Amended 1976)

Section 14.09. Subdivision or Consolidation of Land.

A. Subdivision Ordinance. The council shall enact an ordinance governing the subdivision or consolidation of land pursuant to which subdivision regulations shall be promulgated.

B. Approval of Subdivisions. After the enactment of the ordinance governing subdivisions or consolidations of land, no land may be subdivided unless the proposed subdivision plans are in conformity with the subdivision ordinance and regulations and have been approved by the planning commission.

C. Regulations of the Board of Water Supply. The regulations of the board or water supply shall govern the extent to which water mains and all necessary appurtenances shall be installed to and within subdivisions.

Section 14.10. Zoning Ordinance. The council shall enact zoning ordinances which shall contain the necessary provisions to carry out the purpose of the general plan.

Section 14.11. Public Hearings.

A. Prior to the recommending of the general plan or any development plan or any zoning or subdivision ordinances or any amendment thereto, the planning commission shall hold a public hearing thereon at which interested persons shall be afforded a reasonable opportunity to be heard.

B. Prior to the granting of any variance, the planning commission shall hold a public hearing thereon at which interested persons shall be afforded a reasonable opportunity to be heard.

Section 14.12. Appeals. Appeals from any decision of the planning commission shall be instituted in the circuit court within thirty (30) days after service of a certified copy of the decision of the commission. All commission proceedings and appeals shall be in conformity with the Hawaii Administrative Procedure Act.

ARTICLE XV
DEPARTMENT OF PERSONNEL SERVICES

Section 15.01. Organization. There shall be a department of personnel services consisting of a civil service commission, a director and the necessary staff for the purpose of establishing a system of personnel administration based upon merit principles, devoid of any bias or prejudice and providing a systematic and equitable classification of all positions through adequate job evaluation.

Section 15.02. Civil Service Commission Organization. The civil service commission shall consist of five members who shall be in sympathy with and who shall believe in the principles of the merit system in public employment, or the members appointed, one shall be selected from among persons employed in private industry in either skilled or unskilled laboring positions as distinguished from executive or professional positions.

Section 15.03. Powers and Duties. The civil service commission shall:

A. Adopt rules and regulations to carry out the civil service and compensation laws of the State and county. Such rules and regulations shall distinguish between matters of policy left for the determination of the commission and matters of technique and administration to be left for execution by the director.

B. Hear and determine appeals made by any officer or employee aggrieved by any action of the director or by any appointing authority. Appeal from the decision of the commission shall be as provided by law.

C. Advise the mayor and director of personnel services on problems concerning personnel and classification administration.

D. Execute such powers and duties as may be provided by law.

Section 15.04. Director of Personnel Services. The director of personnel services shall have had a minimum of five years of training and experience in personnel administration either in public service or private business, or both, at least three years of which shall have been in a responsible administrative capacity and shall be in sympathy with the principles of the merit system. He shall be appointed and may be removed by the commission. The director shall be the head of the department of personnel services and shall be responsible for the proper conduct of all administrative affairs of the department, and for the execution of the personnel program prescribed in this charter and in the ordinances and regulations authorized by this charter.

Section 15.05. Civil Service and Exemptions. All positions in the county, except those exempted by law, shall be under civil service.

ARTICLE XVI
LIQUOR CONTROL COMMISSION

Section 16.01. Organization. There shall be a department of liquor control consisting of the liquor control commission, a director and the necessary staff. (Amended 1980)

Section 16.02 Liquor Control Commission. The liquor control commission shall consist of five members.

Section 16.03. Disqualifications of Liquor Control Commissioners. No person shall be a member of the liquor control commission who is or becomes engaged, or is directly or indirectly interested in any business for the manufacture or sale of liquor who advocates or is or becomes a member of, or is identified or connected with, any organization or association which advocates prohibition; who is an elected officer of the State or county government or who presents himself as a candidate for election to any public office during the term of his appointment hereunder. This provision shall be enforced by the mayor by the removal of the disqualified member whenever such disqualifications shall appear.

Section 16.04 Powers and Duties of Commission. The liquor control commission shall:

A. Adopt rules and regulations having the force and effect of law for the administration of liquor control in the county and to enforce the liquor control laws.

B. Grant, refuse, suspend and revoke any licenses for the manufacture, importation and sale of liquors.

C. Investigate violations of liquor control laws through its inspectors, hear and determine all complaints and citations regarding violations of liquor control laws and impose such fines or penalties as may be provided by law upon conviction thereof. Appeal from the decision of the commission may be made as provided for in the Hawaii Administrative Procedure Act. (Amended 1980)

Section 16.05 Director. The director shall be appointed and may be removed by the liquor control commission. The director shall have had a minimum of five years of business experience, at least three of which shall have been in a responsible administrative capacity. He shall be the head of the department and shall be responsible for the management, supervision and control of all subordinate members of the department's staff. (Amended 1980)

ARTICLE XVII
DEPARTMENT OF WATER

Section 17.01 Organization. There shall be a department of water supply consisting of a board of water supply, manager and chief engineer and the necessary staff.

Section 17.02 Board of Water Supply Organization. The board of water supply shall consist of seven members, four of whom shall be appointed by the mayor with the approval of the council. The State district engineer of the department of transportation, the county engineer, and the planning director shall be ex-officio voting members of the board. The ex-officio members shall not serve as chair or vice-chair of the board. The board shall hold at least one regular meeting each month. It shall adopt rules and regulations necessary for the conduct of its business. (Amended 1980, 1996)

Section 17.03 Powers and Duties of the Board. The board shall manage, control and operate the waterworks of the county and all property thereof for the purpose of supplying water to the public, and shall collect, receive, expend and account for all sums of money derived from the operation thereof and all other moneys and property provided for the use or benefit of such waterworks.

A. The board shall maintain accounts to show its complete financial status and the activities of management and operation including current projects. It shall submit a written report quarterly to the mayor and council on its financial status and operations. (Amended 1980)

B. Review the State's and County's general plans with the board's general plan for water sources and system. The board shall transmit such review and plans through the mayor to the council. The board's general plan for water sources and system shall implement the County's general plan. (Amended 1980)

C. The board may provide for a reserve fund, issue revenue bonds, provide for payment of bonds, expend bond funds and other funds, establish rates and charges, acquire property, sue and be sued and engage in and undertake all other activities as provided for in Chapter 145-A, Revised Laws of Hawaii 1955, and as may be hereafter provided for by law.

D. The board may make and, from time to time, alter, amend and repeal rules and regulations relating to the management, control, operation, preservation and protection of the waterworks. Such rules and regulations shall have the force and effect of law. Penalties for the violation of any rule or regulation shall be set forth in the rules and regulations.

Section 17.04. Staff. The board shall appoint an engineer duly registered under Hawaii State laws pertaining to registration of engineers. He shall be known as the manager and chief engineer and shall be the head of the department. He shall have had a minimum of five years of training and experience in an engineering position, at least three years of which shall have been in a responsible administrative capacity. He shall have the powers and duties prescribed by the board. (Amended 1980)

ARTICLE XVIII
CIVIL DEFENSE AGENCY

Section 18.01. Civil Defense Agency. There shall be a civil defense agency whose powers, duties, functions and organization shall be as provided by law.

Section 18.02. Mayor to Declare State of Emergency. The power to declare a state of disaster or emergency is conferred on the mayor. The mayor may declare an emergency when the peace, life, property, health or safety of the community are endangered, but his failure or refusal to make such declaration shall not preclude the county council from finding that an emergency exists providing that the county council adopt an emergency ordinance in accordance with the charter. (Amended 1984)

Section 18.03. Civil Defense Contingency Fund. The council shall provide in the annual budget a civil defense contingency fund of not less than \$50,000.00 to be expended by the mayor for public purposes during any state of emergency or disaster. A report containing a complete accounting of all such expenditures shall be made as soon as practicable to the council. (Amended 1984)

ARTICLE XIX
FINANCIAL PROCEDURES

Section 19.01. Fiscal Year. The fiscal year shall begin on the first day of July and end on the thirtieth day of June of the succeeding year. (Amended 1992)

Section 19.02. The Proposed Annual Budget Ordinance.

A. The proposed annual budget ordinance, consisting of the operating and capital budgets for the ensuing fiscal year, shall be prepared by the director of finance and submitted by the mayor to the council, together with a budget message and any proposed revenue measure, on or before the fifteenth day of March of each year. If the fifteenth day of March falls on a Saturday, Sunday, or legal holiday, the proposed annual budget ordinance shall be submitted on the prior working day.

On or before May eighth of each year, the mayor may submit one communication to the council which suggests modifications to the proposed annual budget ordinance. The communication shall describe the mayor's suggested modifications to the proposed annual budget and the reasoning justifying such modifications. (Amended 1980, 1992)

B. On or before the date specified by the mayor, the head of each county department, office or agency shall furnish the mayor with estimates for the ensuing fiscal year covering the revenues and

expenditures of the department, office or agency, together with such other information as the mayor may request.

Section 19.03. The proposed and adopted annual budget ordinance shall be a balanced budget, the total expenditures and appropriations shall not exceed the estimated revenues and other resources. (Amended 1992)

Section 19.04. The operating budget shall include salaries, materials and supplies, including equipment and fixtures, necessary for the upkeep, maintenance and operation of the departmental or agency functions and other expenses incident to the operational requirements of the department or agency.(Amended 1992)

Section 19.05.

A. The capital budget shall reflect and fund the capital program to be undertaken during the ensuing fiscal year from current revenues; provided, however, that any project or projects to be financed by bond fund proceeds to be undertaken during the fiscal year shall be included and reflected as part of the capital program.

B. Amendments to the capital budget shall constitute and be effective to amend the capital program.

(Amended 1992)

Section 19.06. Budget Message. The mayor's budget message shall explain the budget in fiscal terms and in terms of work to be done. It shall outline the proposed financial policies of the county for the ensuing fiscal year and describe the most important features of the budget plan. It shall indicate any major changes in financial policies and in expenditures, appropriations and revenues as compared with the fiscal year currently ending, and shall set forth the reasons for the changes. (Amended 1992)

Section 19.07. Consideration and Adoption by Council.

A. Upon receipt of the proposed annual budget, the Council shall immediately publish a notice in a newspaper of general circulation in the county, setting forth (1) a summary of the estimated revenues, including any new sources of revenues, and expenditures; (2) that copies of the budget are available at the office of the county clerk; (3) the date, time and place at which the council will commence its public hearings upon the proposed budget, which shall not be less than ten days after the date of the publication of such notice.

Upon receipt of the mayor's communication which suggests modifications to the proposed annual budget ordinance, the council shall hold a public hearing on the mayor's communication suggesting modifications to the proposed annual budget ordinance. The public

hearing shall comply with the provisions of Chapter 92, Hawaii Revised Statutes, as amended. After the public hearing and before final reading of the proposed annual budget ordinance, the council shall approve, deny, or receive the suggested modifications in the mayor's communication.

Upon the conclusion of the hearings, the council may reduce any item or items in the mayor's proposed budget by a majority vote and may increase any item or items therein or add new items thereto by an affirmative vote of two-thirds of the entire membership. The council shall pass on final reading the annual budget ordinance on or before the seventh day of June of the fiscal year currently ending. If final reading is not taken on or prior to such day, the annual budget ordinance as submitted by the mayor on or before March 15 shall be deemed to have been enacted as the budget for the ensuing fiscal year.

B. Amendments to the adopted annual budget ordinance may be submitted by the mayor, unless otherwise provided, and considered by the council under the same procedures prescribed in Section 19.07A for the enactment of the operating budget ordinance, but no amendment shall increase the aggregate of authorized expenditures to any amount greater than the estimate of revenues for the fiscal year.

(Amended 1992)

Section 19.08. Administration and Enforcement of the Annual Budget Ordinance.

A. The enactment of the annual budget ordinance shall constitute an appropriation of the sums specified therein for the purposes and from the funds indicated. Such appropriation shall be considered valid only for the fiscal year for which made, and any part of such appropriation which is not encumbered or expended shall lapse at the end of the fiscal year, except that appropriations to the fund established by paragraph C of section 19.15 shall not lapse, but shall remain in the fund, accumulating from year-to-year. Agencies authorized to make expenditures under the annual budget ordinance may proceed without other authority from the council to incur obligations or make expenditures for proper purposes to the extent that the moneys are available and as allotted.

B. Immediately following the enactment of the annual budget ordinance, the heads of all agencies shall submit to the director of finance schedules showing the expenditures anticipated for each quarter of the fiscal year.

C. The approval of an expenditure schedule by the mayor shall constitute a budgetary allotment which shall, unless a revision thereof is approved by the mayor, be binding upon such agencies and

the director of finance shall approve or issue no requisition, purchase order, voucher or warrant that is not in accordance with such allotment.

D. The allotment herein provided may be altered at any time by the mayor. The mayor shall direct appropriate revisions in allotments to keep expenditures within the revenues received or anticipated.

E. Any part of an allotment which is not expended or encumbered shall be deemed reallocated for the next allotment period.

F. The mayor may at any time transfer an unencumbered appropriation balance or portion thereof within a division or between divisions in the same department. Transfers between departments, boards or commissions shall be made only by the council by ordinance adopted pursuant to Section 19.07B, upon the recommendations of the mayor.

(Amended 1992, 1996, 2002)

Section 19.09. Capital Program and Capital Budget.

A. The capital program shall include:

(1) Permanent public improvements, including planning, engineering and administrative costs, but not the repair or maintenance thereof.

(2) The acquisition of land or any interest therein for any permanent public improvements.

(3) The furnishings, fixtures and appurtenances of any permanent improvement when first constructed or acquired.

B. The planning commission shall prepare the capital program for each of the ensuing five fiscal years, predicated upon the requests of the several agencies and based upon the finance director's statement of moneys likely to be available and the amount of bonds which the mayor believes would be proper for the county to issue.

C. The capital program shall be appended to the capital budget and shall be submitted to the council for its approval. The council may adopt the capital program pursuant to Section 19.07A with or without amendments.

D. Bond fund proceeds shall be appropriated and expended in accordance with law.

(Amended 1992)

Section 19.10. Appropriations and Changes.

A. If, during any fiscal year, the mayor or council certifies that there are available for appropriations (1) revenues received from sources not anticipated in the adopted annual budget for that year or (2) revenues received from anticipated sources but in excess of the budget estimates therefor, the council may introduce and make supplemental appropriations for that year up to the amount of the additional revenues so certified. Such appropriations shall be made by ordinance adopted pursuant to Section 19.07B. (Amended 1992)

B. To meet a public emergency affecting life, health or property, the council, upon written request by the mayor, may make emergency appropriations. Nothing in this section shall preclude the council from introducing and adopting an emergency appropriation ordinance pursuant to Section 18.02. Such appropriations shall be made by ordinance adopted pursuant to Section 4.02K except that such ordinance shall be approved by a majority of all council members present. (Amended 1992)

C. Any unappropriated surplus or unencumbered balances certified by the mayor as available for appropriation under section 19.14 may be appropriated by amendment to the annual budget ordinance. Such amendments may be introduced by the mayor or the council. (Amended 1992)

Section 19.11. Appropriations: Reduction and Transfer

A. If, at any time during the fiscal year, it appears probable to the mayor that the revenues available will be insufficient to meet the amount appropriated, he shall report to the county council without delay indicating the amount of the deficit, any remedial action taken by him and his recommendations as to any further action to be taken. The council shall then take such further action as it deems necessary to prevent or minimize any deficit. For that purpose, it may, by ordinance adopted pursuant to Section 19.07B, reduce one or more appropriations; but no appropriation for debt service may be reduced, and no appropriation may be reduced by more than the amount of the unencumbered balance thereof or below any amount required by law to be appropriated. (Amended 1992)

Section 19.12. Lapse of Appropriations. Every appropriation shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered, except appropriations to the fund established by paragraph C of section 19.15 and appropriations for capital budget items where any portion of said appropriation has been expended. (Amended 1992, 2002)

Section 19.13. Payments and Obligations.

A. With the exception of debt service charges, no payment shall be authorized or made and no obligation incurred against the county, except in accordance with appropriations duly made and under such procedures and policies as may be established by ordinance. Every obligation incurred and every authorization of payment in violation of the provisions of this charter shall be void. Every payment made in violation of the provisions of this charter shall be void. Every payment made in violation of the provisions of this charter shall be illegal, and all county officers who knowingly authorize or make such payment or any part thereof, shall be jointly and severally liable to the county for the full amount so paid or received. If any county officer or employee knowingly authorizes or makes any payments or incurs any obligation in violation of the provisions of this charter, or in violation of the provisions of the procedures and policies established by ordinance, or takes part therein, that action shall be cause for his removal.

B. Nothing contained in this section or other sections of this charter shall be construed to prevent the making or authorizing of payments or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds, nor shall it prevent the making, when permitted by law, of any contract or any lease providing for the payments of funds at a time beyond the end of the fiscal year in which the contract or lease is made. But any contract, lease or other obligation requiring the payment of funds from appropriations of a later fiscal year or of more than one fiscal year shall be made or approved by ordinance.

(Amended 1992)

Section 19.14. Surplus and Reserves. Any unappropriated surplus and any unencumbered balances of any appropriations in any fund at the end of any fiscal year shall be available for appropriation for the succeeding fiscal year. The mayor shall certify to the council the amount of any unappropriated surplus or unencumbered balances by January 1 following the close of the fiscal year. (Amended 1992)

Section 19.15. Fund Administration.

A. Deposit of Funds. Money received by officers and employees shall be deposited promptly to the county's account in depositories authorized by law.

B. Creation of Funds. In addition to the funds established by this charter, the mayor, with the approval of the council, may establish other funds when necessary and when no appropriate class of funds exists. Nothing in this section shall preclude the council from introducing, and adopting other funds by ordinance.

C. Public Access, Open Space, Natural Resources Preservation

Fund.

(1) In adopting each fiscal year's budget and capital program, the council shall appropriate a minimum of one-half of one percent of the certified real property tax revenues to a fund known as the public access, open space, natural resources preservation fund. The moneys in this fund shall be utilized for purchasing or otherwise acquiring lands or property entitlements for land conservation purposes in the county of Kauai for the following purposes: public outdoor recreation and education, including access to beaches and mountains; preservation of historic or culturally important land areas and sites; protection of significant habitats or ecosystems, including buffer zones; preserving forests, beaches, coastal areas and agricultural lands; protecting watershed lands to preserve water quality and water supply; conserving land in order to reduce erosion, floods, landslides, and runoff; improving disabled and public access to, and enjoyment of, public land, and open space; acquiring disabled and public access to public land, and open space.

(2) The moneys in this fund may also be used for the payment interest, principal, and premium, if any, due with respect to bonds issued pursuant to Sections 3.13, 3.14, or 3.15, Charter, in whole or in part - for the purposes enumerated in paragraph (1) of this section and for the payment of costs associated with the purchase, redemption or refunding of such bonds.

(3) At any given time, no more than five percent (5%) of this fund shall be used for administrative expenses.

(4) Any balance remaining in this fund at the end of any fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year. The moneys in this fund shall not be used for any purpose except those listed in this section.

(5) The Council shall by ordinance establish procedures for the administration and priorities for the expenditure of moneys in this fund.

(Amended 1992, 2002)

Section 19.16. Insurance. The director of finance shall procure insurance for the protection of designated properties of the county in such amounts and under such conditions as the council shall, by ordinance, prescribe from companies licensed to do business in the

State. The council may also instruct the director of finance to procure insurance coverage for any of the county activities it deems should be covered by insurance.

Section 19.17. Surety Bonds. Except as otherwise provided, the council shall determine which officers and employees shall be required to furnish surety bonds and shall determine the kind and amount of each individual or blanket bond. All officers concerned with the receipt, collection, custody or disbursement of public funds shall be bonded. The director of finance shall procure all such surety bonds from companies licensed to do business in the State. All such bonds shall be in favor of and the premiums thereon shall be paid by the county.

Section 19.18. Contracts.

A. Before execution, all written contracts to which the county is a party shall be approved by the county attorney as to form and legality. All such contracts shall be signed by the mayor, except that contracts for purchase of materials, supplies, equipment, personal services and public works contracts shall be signed by the director of finance.

B. Before execution, contracts involving financial obligations of the county shall also be approved by the director of finance as to the availability of funds in the amounts and for the purposes set forth therein.

Section 19.19. Centralized Purchasing.

A. The department of finance shall be responsible for the procurement of all materials, supplies, equipment and services required by any department, office or agency of the county.

B. There shall be a standardization committee composed of three members. The mayor shall appoint two members, each of whom shall be from a separate department. The third member shall be a representative of the department of finance who shall serve as chairman of the committee. The committee shall classify all materials, supplies, equipment commonly used by the various departments, offices or agencies of the county and shall prepare and adopt standards and specifications for such materials, supplies and equipment.

C. All Purchases and contracts for materials, supplies, equipment and services shall be made by advertising for bids, except that such purchases and contracts may be negotiated without advertising if

(1) The Public necessity will not admit of the delay incident to advertising.

(2) For materials, supplies and equipment, including animals and plants, patented or proprietary articles, books and publications and professional services for which it is impracticable to secure competition.

(3) For equipment determined to be technical equipment and as to which it is determined that the procurement thereof without advertising is necessary to assure standardization of the equipment and interchangeability of parts, and that such standardization and interchangeability are necessary in the interest of economy.

The advertisement for bids shall be made a sufficient time before the

purchase or contract, and specification and invitations for bids shall permit such full and free competition as is consistent with the procurement of the types of materials, supplies, equipment and services necessary to meet the requirements of the department, office or agency concerned.

All procurements shall be conducted pursuant to state law. Competitive bidding thresholds lower than the bidding thresholds established under state law may be enacted by ordinance. (Amended 1976, 1980, 1984, 1998)

All bids shall be publicly opened at the time and place stated in the advertisement. Award shall be made with reasonable promptness by written notice to that responsible bidder whose bid conforming to the invitation for bids will be most advantageous to the county, price and other factors considered.

D. Purchase orders shall be submitted to the office of the director of finance for approval as to availability and designation of funds and no purchase order shall be valid without such approval.

E. The director of finance shall, from time to time, secure from all agencies estimates of their needs for articles of common use and shall, when practicable, consolidate requisitions in order to secure the benefits of quantity purchases and to that end when authorized by the council, cooperate with other public agencies.

F. The director of finance may, by rules, provide for:

- (1) Emergency purchases which might be required.
- (2) Petty cash funds or blanket purchase orders, or both.

G. All county storerooms (other than departmental) shall be supervised and operated by the director of finance.

H. The director of finance shall require such guarantees of performance by vendors as in his opinion may be necessary or may be prescribed by ordinance.
(Amended 1998)

Section 19.20. Disposition of Personal Property. All departments, offices or agencies having materials, supplies or equipment which are not useful to them, shall, from time to time and at least annually, furnish a list thereof to the director of finance who shall circulate such list to the various departments and agencies of the county; and, if the same is found to be usable, it shall be returned to the general storeroom or inventories for subsequent issue upon requisition. If it is found to be unusable for public purposes, the director of finance shall provide for the sale by informal sealed bid

without advertising and the proceeds shall be placed in the fund from which the original purchase was made.

Section 19.21. Past due Accounts. The finance director shall promptly collect all past due accounts. Unless otherwise provided by law any account more than ninety (90) days past due shall be referred to the county attorney's office for collection. (Amended 1984)

ARTICLE XX
CODE OF ETHICS

Section 20.01. Standards of Conduct. In order to establish a high standard of integrity and morality in government service, a code of ethics is hereby established.

Section 20.02. No officer or employee of the county shall:

A. Solicit, accept or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence him in the performance of his official duties or is intended as a reward for any official action on his part.

B. Disclose information which, by law or practice, is not available to the public and which he acquires in the course of his official duties or use such information for his personal gain or for the benefit of anyone.

C. Acquire financial interest in business enterprises which he may be directly involved in official action to be taken by him.

D. Appear in behalf of private interests before any county board, commission or agency.

E. Use his official position to secure a special benefit, privilege or exemption for himself or others.

F. Use county property for other than public activity or purpose.

Section 20.03. Contracts.

A. The county shall not enter into any contract with an officer or employee or with a firm in which an officer or employee has a substantial interest involving services or property of a value in excess of \$500.00 unless the contract is made after competitive bidding.

B. The county shall not enter into a contract with any person or firm which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding six months and who participated while in county employment with the

subject matter of the contract.

C. This section shall not apply to personal employment contract.

Section 20.04. Disclosure.

A. The mayor, councilpersons, all department heads and deputies, members of boards and commissions and the purchasing agent shall, within thirty (30) days of assuming office, file with the board a list of all real property within the county in which he has any right, title or interest, a list of all business firms which contract for county business in which he has any interest, and all their places of employment, including part-time employment, all sources and amounts of income, business ownership, officer and director positions, debts, creditor interests in insolvent businesses and the names of persons represented before government agencies. Amendments to the list, including additions, deletions or changes in title, interest in property or of employment, shall be made within thirty (30) days of the occurrence of the amendment. The list shall be a matter of public record.

B. Any elected or appointed officer or employee who possesses or acquires such interest as might reasonably tend to create a conflict with his duties or authority shall make full disclosure to his appointing authority, to the council, in the case of a member or the council, or to the board or commission on which he serves at any time such conflict becomes apparent. Any member of the council or any board or commission who knows he has a direct personal financial interest in any proposal pending before the body of which he is a member shall disclose such interest to such body. No appointed officer or employee shall participate, discuss or vote on such pending matter unless his vote is required to establish a quorum to act on such matter; provided that a member of the council is not precluded from voting on such matter so long as a written disclosure has been made in the event there is a conflict of interest relating to such matter. (Amended 1976, 1980)

C. Penalties.

(1) Any violation of any of the provisions of this section shall, at the option of the director of finance, render forfeit and void the contract, work, business, sale or transaction affected.

(2) Any violation of any of the provisions of this section shall constitute cause for fine, suspension or removal from office or employment.

D. The council shall, by ordinance, adopt and may, from time to time, revise and amend such complementary provisions as may be necessary to supplement the code of ethics.

E. The mayor, the council and the board of ethics shall be responsible for the enforcement of provisions of this article.

Section 20.05. Board of Ethics. There shall be a board of ethics.

A. The board shall consist of five members.

B. The board shall annually select a chairman and a secretary from among its members and shall adopt rules necessary for the conduct of its meetings.

C. The board shall meet at the call of the chairman or of a majority of its members. A majority of the membership shall constitute a quorum for the conduct of business, and the affirmative vote of at least a majority shall be necessary to take any action.

D. It shall be the function of the board:

(1) To initiate, receive, hear and investigate complaints of violations of the code of ethics and to transmit its findings to the council as to complaints involving county officers and to the civil service commission as to employees. It may also, on its own, file impeachment proceedings in the circuit court.

(2) To render advisory opinions or interpretations with respect to application filing and request. All requests for advisory opinions shall be answered within thirty (30) days of its filing and failure to submit an advisory opinion within said thirty (30) days shall be deemed a finding of no breach of the code.

(3) To prescribe a form for the disclosure provided in this section and to implement the requirements of the disclosure provisions.

(4) To examine all disclosure statements filed and to comment on or advise corrective action to any matters that may indicate a conflict of interest. (Amended 1976)

(5) To propose revisions of the code to assure its effectiveness.

E. In the course of its investigations, the board shall have the power to administer oaths and subpoena witnesses and to compel the production of books and papers pertinent thereto.

F. All hearings on complaints shall be closed to the public. Only findings of violations shall be referred to the council or the civil service commission. Upon referral to the council or civil service commission, the violations shall be treated as any other

similar item of council or civil service commission business.

G. If any officer or employee, or former officer or employee, shall obtain an advisory opinion from the board and shall govern himself accordingly, or shall act in accordance with the opinions of the board, he shall not be held guilty of violating any of the provisions of the code.

H. Cooperations. The council and mayor shall cooperate and provide financing and personnel help required by the commission in the performance of its duties.

ARTICLE XXI

SPECIAL ASSESSMENT IMPROVEMENTS

Section 21.01. Improvements by Special Assessment. The council shall enact the provisions of Section 146-130 to 146-171 of the Revised Laws of Hawaii 1955, as amended, with the exception of Section 146-167, as a county ordinance. No changes, however, shall be made by the council regarding any matter under the control of the board of water supply without the prior approval of its board. Exemptions from special assessments and reimbursement of costs to the county shall be as provided by law.

ARTICLE XXII

INITIATIVE AND REFERENDUM

Section 22.01. Power of Initiative and Referendum.

A. The power of voters to propose ordinances (except as provided in Section 22.02) shall be the initiative power.

B. The power of the voters to approve or reject ordinances that have been passed by the county council (except as provided in Section 22.02) shall be the referendum power. (Amended 1976)

Section 22.02. Limitations to Powers. The initiative power and the referendum power shall not extend to any part or all of the operating budget or capital budget; any financial matter relating to public works; any ordinance authorizing or repealing the levy of taxes; any emergency legislation; any ordinance making or repealing any appropriation of money or fixing the salaries of county employees or officers; any ordinance authorizing the appointment of employees; any ordinance authorizing the issuance of bonds; or any matter covered under collective bargaining contracts. (Amended 1976)

Section 22.03. Submission Requirement.

A. Voters seeking to propose an ordinance by initiative shall submit an initiative petition addressed to the council and containing

the full text of the proposed ordinance. The initiative petition shall be filed with the clerk of the council at least ninety-six (96) hours prior to any regular council committee meeting.

B. Voters seeking referendum of an ordinance shall submit a referendum petition addressed to the council, identifying the particular ordinance and requesting that it be either repealed or referred to the voters of the county.

C. Each initiative or each referendum petition must be signed by not less than twenty percent (20%) of the number of eligible voters in the last preceding general election.

D. If an initiative or referendum measure is to be placed on the ballot in a general election, the initiative and referendum petitions must be submitted not less than one hundred twenty (120) calendar days prior to the day scheduled for the general election in the county. (Amended 1976)

Section 22.04. Committee. For each initiative or each referendum petition there shall be a petitioner's committee representing all the petitioners, which committee shall be composed of five (5) members who shall be qualified voters of the county and signers of the petition. The committee shall be responsible for circulation of the petition and for assembling and filing the petition in proper form. The committee shall have the power to amend or withdraw the petition as provided by this article. (Amended 1976)

Section 22.05. Initiative and Referendum Petition: Form and Sufficiency.

A. For immediate acceptance of the petition, the clerk of the council shall require reasonable compliance with the following:

(1) The petitions indicate by name and address, the five (5) signers who constitute the petitioner's committee for that petition.

(2) The petitions indicate the address which all notices for petitioner's committee are to be sent.

(3) The signatures to petitions be filed on papers of uniform size and style and assembled as one instrument.

(4) Each signature on the petition shall be followed by the name (printed) and the place of residence of the person signing.

(5) The petition be signed by the required number of qualified registered voters of the county.

B. Signatures are invalid and petitions insufficient:

(1) If signers are not given an opportunity to read the full text of the ordinance sought to be reconsidered and if the full text of the ordinance is not contained in or attached to each signature paper or set of signature papers of an initiative or referendum petition throughout circulation.

(2) If affidavits (executed by the circulators for each set of signature papers) are not attached to the papers at the time of filing of petitions with the clerk of the council. Each affidavit shall attest to the effect that: a particular individual personally circulated an identifiable set of papers; each paper bears a stated number of signatures; each signature on a paper was affixed in the circulator's presence; each signature is the genuine signature or the person it purports to be.

C. Individual signatures may be withdrawn within fifteen (15) days after the filing of an initiative or referendum petition with the clerk of the council by the filing of a written request thereof, by the individual, with the clerk or the council. (Amended 1976)

Section 22.06. Procedure After Filing.

A. Certificate of Clerk; Amendment. Within twenty (20) days after the filing of an initiative or referendum petition, the clerk of the council shall complete a certificate as to the sufficiency of the petition.

As soon as a certificate is completed, the clerk shall notify the petitioner's committee of the contents of the certificate. If a petition is certified sufficient, the clerk shall present his certificate to the county council at its next meeting. If the clerk certifies a petition insufficient, his certificate shall show the particulars wherein the petition is defective. A majority of the petitioner's committee may elect to amend a petition certified insufficient and must so notify the clerk, but if a majority does not elect to amend a petition, the clerk shall present his certificate to the county council at its next meeting.

B. Supplementary Petition. if a majority of the petitioner's committee elects to amend its petition, then within ten (10) days after receipt of the clerk's certificate, the committee shall file a supplementary petition upon additional papers. The supplementary petition shall be governed by the same requirements as for an original petition. Within five (5) days after the filing of a supplementary petition, the clerk shall complete a second certificate as to the sufficiency of the original petition as amended by the supplementary petition. Thereafter, the procedural requirements for the petition as amended shall be the same as that for the original petition as provided in subsection A, this section.

C. Council Review. A majority of the petitioner's committee may request the county council to review a clerk's certificate, at or before the meeting at which the clerk presents the certificate to the council. The council shall review the latest clerk's certificate, upon the committee's request, and shall approve or reject the certificate or may substitute its own determination of sufficiency of the petition by resolution.

D. Court Review; New Petition. A final determination as to the sufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose. (Amended 1976)

Section 22.07. County Council Action on Petitions.

A. The county council shall proceed immediately to consider an initiative or referendum petition which has been determined sufficient in accordance with the provisions of this article. If an initiative petition is concerned, the ordinance it proposes shall at once be introduced subject to the procedures required for ordinances under Article IV of this charter; however, not more than sixty (60) days shall elapse between the time of first reading of the initiative proposal as a bill and completion of action to adopt, amend, or reject the same. If a referendum petition is concerned, the ordinance to which that petition is directed shall be reconsidered by the council; and not later than thirty (30) days after the date on which the petition was determined sufficient, the council shall, by ordinance, repeal, or, by resolution, sustain the ordinance.

B. If the council rejects an initiative amendment proposal or passes it with an amendment unacceptable to a majority of the petitioner's committee, or if the council fails to repeal an ordinance reconsidered pursuant to a referendum petition, it shall submit the originally proposed initiative ordinance or refer the reconsidered ordinance concerned to the voters of the county at the next general election.

C. The council may, in its discretion, and under appropriate circumstances, provide for a special election.

D. The ballot for such measures shall contain an objective summary of the substance of the measure and shall have below the ballot title designated spaces in which to mark a ballot FOR or AGAINST the measure. Copies of initiative or referendum ordinances shall also be made available at the polls.

E. Suspension of Ordinance. When a referendum petition or amended petition has been certified as sufficient by the County

Clerk, the Ordinance sought to be repeated in the petition shall not be effective and shall be deemed suspended from the date the petition is certified as sufficient until the voters have voted on the measure and the election results have been certified as provided in this Article. (Amended 1976, 1980)

Section 22.08. Withdrawal of Petitions. An initiative or referendum petition may be withdrawn at any time prior to the sixtieth (60th) day immediately preceding the day scheduled for a vote in the county by filing with the county clerk a request for withdrawal signed by at least four (4) members of the petitioners committee. Upon the filing or the request, the petition shall have no further force or effect and all proceedings thereon shall be terminated. (Amended 1976)

Section 22.09. Results of Election. If a majority of the voters voting upon a proposed initiative ordinance shall vote in favor of it, the ordinance involved shall be considered adopted upon certification of the election results. If a majority of the voters voting upon a referendum ordinance shall vote against it, the ordinance involved shall be considered repealed upon certification of the election results. (Amended 1976)

Section 22.10. Upon approval by a majority of the votes cast on the proposal, the charter amendment shall take effect upon all legislative acts not excluded herein enacted after January 2, 1977. (Amended 1976)

Section 22.11. A referendum that nullifies an existing ordinance shall not affect any vested right or any action taken or expenditures made up to the date of the referendum. (Amended 1976)

ARTICLE XXIII **GENERAL PROVISIONS**

Section 23.01. Definitions.

A. The term "agency" shall mean any office, department, board, commission or other governmental unit of the county.

B. The term "employee" shall mean any person, except an officer, employed by the county or any department thereof, but the term shall not include any independent contractor.

C. The term "law" shall mean any law of the State of Hawaii or any ordinance or the county of Kauai or any rule or regulation of any department having the force and effect of law.

D. The term "officer" shall include the following:

(1) Mayor and members of the council.

- (2) Any person appointed as administrative head of any agency of the county or as a member of any board or commission.
- (3) The first deputy appointed by the administrative head of any department.
- (4) Deputies of the county attorney.

E. The term "State" shall mean the state of Hawaii.

Section 23.02. Board and Commissions. The council may create such other boards and commissions, not provided herein, by ordinance. All boards and commissions, including those which are specifically provided for herein, shall be organized, appointed and vested with the power and authority as provided hereunder which are not in conflict with the provisions of this charter.

A. All boards and commissions shall consist of at least five members.

B. All members of boards and commissions shall be appointed and may be removed by the mayor, with the approval of the council, except that members of boards and commissions established by ordinance may be appointed and removed as provided by ordinance. Such ordinance shall provide for either of the following appointing and removal methods:

- 1) Appointment and removal of members by the mayor, with the approval of the council; or
- 2) Joint appointing powers under which the mayor and the council each appoint an equal number of members, and one additional member is selected by the members previously appointed by the mayor and council. Members appointed by the mayor may be removed by the mayor with the approval of the council. Members appointed by the council may be removed by the council with the approval of the mayor. The one additional member selected by the previously appointed members may be removed by the mayor with the approval of the council.

A board or commission member who is absent from three consecutive meetings without prior excuse of the chairman shall be expelled from membership. Upon notification of such expulsion by the chairmen, the applicable appointing authority shall within 15 days of the notice, begin the appointment process. (Amended 1986)

C. The members of all boards or commissions shall serve for staggered terms of three years and until their successors are appointed. However, no holdover term shall extend beyond ninety days. All members currently serving shall serve their term as set when they were appointed. All appointments after January 1, 1977 shall be for three-year terms. Notwithstanding the holdover period or period of any vacancy, the term of any appointment shall be deemed to have commenced immediately after the normal termination date of his predecessor. The council may, by ordinance, provide for the staggering of terms provided that no terms of members already appointed shall be changed. (Amended 1976, 1980)

D. Each commissioner shall be, at the time of his appointment, a duly qualified resident elector of the county.

E. No more than a bare majority of the members of any board or commission shall belong to the same political party.

F. Any vacancy occurring on any board or commission shall be filled for the unexpired term.

G. Each board or commission shall elect its chairman or other officers. The term of office of the chairmanship of any board or commission shall be one year and no member of any such board or commission shall succeed himself as chairman for the term immediately following the expiration of his term.

H. No member of any board or commission shall be eligible for more than two consecutive terms on the same board or commission or on two different boards or commissions of the county. After the expiration of two consecutive terms, no person shall be eligible for appointment to any county board or commission until one year has elapsed after such service. Any partial term of more than two years shall be considered a term as used herein. (Amended 1976)

I. Employees and officers of the State or county may be eligible to serve on boards or commissions, provided that such service does not result in a conflict of interest or is expressly prohibited by law.

J. A majority of all the members to which a board or commission is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which such board or commission is entitled shall be necessary to make any action or such board or commission valid.

K. All boards and commissions shall have the power to subpoena witnesses and administer oaths to witnesses as to all matters within the scope of such boards or commissions.

L. The members of boards and commissions shall receive no compensation but shall be entitled to be paid for necessary expenses incurred by them in the performance of their duties.

M. Except for purposes of inquiry, no board or commission, nor its members, shall interfere in any way with the routine administrative affairs of its department normally administered by the department head.

N. Each board or commission shall have power to establish its own rules of procedures necessary for the conduct of its business, except as otherwise provided in this charter.

Section 23.03. Title to Property. Except as otherwise provided by law, title to all property acquired by any agency of the county shall be vested in the county.

Section 23.04. Facsimile Signatures. Whenever any person is required to sign negotiable instruments or multiple bonds, the signature may be a facsimile.

Section 23.05. Expenses. All officers and employees of the county shall be entitled to their traveling or other necessary expenses incurred in the performance of their public duties.

Section 23.06. Claims. No action shall be maintained for the recovery of damages for death or injury to person or property by reason of negligence of any officer or employee of the county unless a written statement stating fully when, where and how the damages occurred, the extent thereof and the amount claimed therefor, has been filed with the county clerk within six months after the date the death, injury or damages were sustained.

Section 23.07. Annual Reports.

A. Not later than ninety (90) days after the close of the fiscal year, each agency of the county shall make an annual written report of its activities to the mayor in such form and under such rules as the mayor may prescribe. Copies of such reports shall be filed in the office of the county clerk.

B. Not later than one hundred eighty (180) days after the close of the fiscal year, the mayor shall make an annual report concerning the activities of all agencies of the county. A copy of such report shall be filed in the office of the county clerk.

Section 23.08. Records and Meetings Open to Public.

A. All books and records of every department shall be open to the inspection of any person at any time during business hours, except as otherwise provided by law. Certified copies or extracts from such books and records shall be given by the officer having custody of the same to any person demanding the same and paying or tendering a reasonable fee to be fixed by ordinance for such copies or extracts.

B. All meetings of boards and commissions shall be held in the county building or other public places and no such body shall take any official action except at a meeting open to the public.

Section 23.09. Rules and Regulations. Unless otherwise authorized by law, all rules and regulations having the force and effect of law adopted by any board, commission or administrative head of a department, must first be approved by the mayor prior to going into effect.

Section 23.10. Penalties. Any violation of a charter provision, any ordinance, or duly enacted rule or regulation having the effect of law shall be subject to a fine not exceeding \$1,000.00 or one year's imprisonment or both unless the charter, ordinance, rule or regulation provides for a specific penalty in which case the specific

penalty shall control. Prosecution for any violation shall be as provided by law for the prosecution of misdemeanors. (Amended 1980)

Section 23.11. County Elections. County elections shall be conducted in accordance with the election laws of the State insofar as applicable, but the county primary and general elections shall be held in every two years following the initial election.

Section 23.12. Oaths of Office. Before entering upon the duties of his office, each officer elected or appointed shall take and subscribe to such oath or affirmation as shall be provided by law.

Section 23.13. Impeachment of Officers. Any officer appointed or elected may be impeached for malfeasance, misfeasance or nonfeasance in office. Such impeachment proceeding shall be commenced in the Fifth Circuit Court, State of Hawaii. The charge or charges shall be set forth in writing in a verified petition for impeachment signed by not less than five percent (5%) of the voters registered in the last general election, except as to charges filed by the ethics commission. If the court sustains the charge or charges, such officer shall be deemed removed from office. The petitioners seeking the impeachment shall bear their own attorneys' fees and other costs of such proceedings, except proceedings initiated by the ethics commission, the cost of which shall be paid by the county.

A. Whenever any officer is sought to be impeached for matters relating to the officer's official powers or duties, and the impeachment is not being sought by the ethics commission, such officer may request legal representation by the county or at county expense.

(1) Such request for legal representation shall be accompanied by a signed statement in a form approved by the County Attorney, in which the officer agrees to reimburse the County for all expenses incurred in such legal representation, if the officer is impeached.

(2) Determination of expenses shall be made by the County Attorney and approved by the Council, and shall be conclusive.

(3) Any officer being impeached for matters not relating to their official powers or duties shall bear their own attorney's fees and costs of such proceedings.

B. Legal representation for impeachment relating to an officer's official powers or duties, and which is not being sought by the ethics commission, shall be as follows:

(1) By the County Attorney's office if requested by the officer and agreed to by the County Attorney.

(2) By outside legal counsel selected by the officer. The Mayor and Council shall appropriate reasonable amounts for such legal services. In the alternative, existing funds which have been appropriated for legal services may be used, provided the Council approves of the amount.

C. Nothing in this section shall preclude the officer sought to be impeached from recovering attorneys fees as provided by law. If legal representation is provided at county expense, such recovery shall be reimbursed to the county.

(Amended 1992)

Section 23.14. Coordination of work. The mayor shall devise a practical and working basis for the cooperation and coordination of work by the various departments, eliminating duplication and overlapping of functions, and shall have the various agencies cooperate with each other in the use of employees, land, buildings. quarters. facilities and equipment. The head of any department may empower or require an employee of another department, subject to the consent of the head of such other department, to perform any duty which he might require of the employees of his department. Whenever in this charter power is vested in a department to inspect, examine or secure data or information or to procure assistance from any other department, a duty is hereby imposed upon the department upon which demand is made to render such power effective.

Section 23.15. Cooperation With Other Organizations. In the performance of its functions, each department shall cooperate with private organizations and with organizations of the governments of the United States, the State, and any other state, and with any of their political subdivisions having similar functions.

Section 23.16 Provisions of Charter Inoperative. If any provision of this charter jeopardizes the receipt by the county of any federal grant-in-aid or other federal allotment of money, such provision may, insofar as such fund is jeopardized, be waived by the council upon the recommendation of the mayor.

Section 23.17. Titles, Subtitles, Personal Pronouns: Construction. Titles and subtitles shall not be used for purposes of construing this charter.

When any personal pronoun appears in this charter, it shall be construed to mean either sex.

ARTICLE XXIV CHARTER AMENDMENT

Section 24.01. Initiation of Amendments. Amendments to this charter may be initiated only in the following manner:

A. By resolution of the council adopted after two readings on separate days and passed by a vote of five or more members of the council.

B. By petition presented to the council, signed by not less than five percent (5%) of the voters registered in the last general election, setting forth the proposed amendments. Such petitions shall designate and authorize not less than three nor more than five of the signers thereto to approve any alteration or change in the form or language or any restatement of the text of the proposed amendments which may be made by the county attorney.

Upon filing of such petition with the council, the county clerk shall examine it to see whether it contains a sufficient number of apparently genuine signatures of voters.

Section 24.02. Elections to be Called.

A. Any resolution of the council or petition of the voters proposing amendments to the charter shall provide that the proposed amendments shall be submitted to the voters of the county at the next general election.

B. The county clerk shall have the proposed amendments published in a newspaper of general circulation in the county at least thirty (30) days prior to submission of the proposed amendments to the voters of the county at the next general election.

C. Should the majority of the voters voting thereon approve the proposed amendments to this charter, the amendments shall become effective at the time fixed in the amendment, or, if no time is fixed therein, thirty (30) days after its adoption by the voters of the county. Any charter amendment shall be published in a newspaper of general circulation in the county within thirty (30) days of the effective date of such amendment.

Section 24.03. Mandatory Review. Five years after the adoption of the charter and at ten year intervals thereafter, the mayor with the approval of the council shall appoint a charter commission composed of seven members to study and review the operation of the county government under this charter. In the event the commission deems changes are necessary or desirable, the commission may propose amendments to the existing charter or draft a new charter which shall be submitted to the county clerk. The county clerk shall provide for the submission of such amendments or new charter to the voters at any general or special election as may be determined by the commission. The commission shall publish not less than thirty (30) days before any election at least once in a newspaper of general circulation within the county the entire text of the amendments or new charter.

A. Unless a new charter is submitted to the voters, each amendment to the charter shall be voted on separately.

B. If a majority of the voters voting upon a charter amendment votes in favor of it or a new charter, if a new charter is proposed, the amendment or new charter shall become effective at the time fixed in the amendment or charter, or if no time is fixed, thirty (30) days after its adoption by the voters. Any charter or amendment shall be published in its entirety not more than thirty (30) days after its adoption.

ARTICLE XXV
SEVERABILITY

Section 25.01.Severability. If any provision of this charter is held invalid, the other provisions of this charter shall not be affected thereby. If the application of the charter or any of its provisions to any person or circumstances is held invalid, the application of the charter and its provisions to other persons or circumstances shall not be affected thereby.

ARTICLE XXVI
TRANSITIONAL PROVISIONS

Section 26.01.Schedule. After the approval of this charter by the voters, this charter shall be in effect to the extent necessary in order that the first election of members of the county council and mayor may be conducted in accordance with the applicable election laws of the State. This charter shall take full effect on January 2, 1969.

Section 26.02. Initial Election Under the Charter. The first county primary and general elections under this charter shall be held in the year 1968.

Section 26.03. Existing Laws and Conflicting Laws. All laws, ordinances, resolutions, rules and regulations in force at the time this charter takes full effect, and not in conflict or inconsistent with this charter, are hereby continued in force until repealed, amended or superseded by proper authority. All laws relating to or affecting this county or its agencies, officials or employees, and all county ordinances, resolutions, orders and regulations which are in force when this charter takes full effect, are repealed to the extent that they are inconsistent with or interfere with the effective operation of this charter or of ordinances or resolutions adopted by the county council under the provisions of this charter.

Section 26.04. Status of Departments and Transfer of Funds.

A. All departments, the status of which are not specifically changed or abolished by this charter, are hereby recognized, continued and established and shall have such powers, duties and functions as provided by law. Members of the various boards, commissions and committees holding office at the effective date of this charter shall continue in office unless they resign or until their terms of office shall expire.

B. The offices of the county auditor and the county treasurer are abolished and their functions transferred to the department of finance.

C. The offices of the elected county clerk and the county attorney are abolished.

Section 26.05. Transfer of Records and Property. All records, property and equipment of any office, division, department, board or commission, the functions of which are assigned to another agency by this charter, shall be transferred and delivered to the agency to which such functions are so assigned. (Amended 1996)

Section 26.06. Status of Present Employees. All civil service employees and full-time employees whose positions are exempt from civil service presently employed by any department or agency which is merged or abolished under this charter, shall be transferred and continued in employment in accordance with Sections 138-44 and 138-45, Revised Laws of Hawaii 1955, as amended, to a comparable position in an agency where such function has been transferred.

Section 26.07. Heads of Departments Continued in Office. Notwithstanding any provision to the contrary, all officers and department heads, whether appointed or elected, holding office immediately prior to the time this charter takes effect, shall continue in employment for a period of not more than forty-five (45) days thereafter, or until they are replaced pursuant to the provisions of this charter, whichever occurs later.

Section 26.08. Temporary Budget and Capital Program. During the transitional period, the mayor shall submit and the council shall adopt, with or without amendments, a temporary current expense budget and a capital program based on the revenues anticipated during said period. Until the adoption of such temporary current expense budget and capital program, the then existing budget and capital program shall remain in effect.

Section 26.09. Pending Proceedings. All petitions, hearings and other proceedings pending before any office, department, board or commission abolished by this charter, and all legal proceedings and investigations begun by such office, department, board or commission and not completed at the effective date of this charter, shall continue and remain in full force and effect and shall be completed before or by the office, department, board or commission which succeeds to the powers and functions of such office, department, board or commission.

Section 26.10. Lawful Obligations of the County. All lawful obligations of the county existing on the effective date of this charter and all fines, taxes, penalties, forfeitures, obligations and right due, owing or accruing to the county, and all writs, prosecutions, actions and proceedings by or against the county shall remain unaffected by the adoption of this charter.

ARTICLE XXVII
RECALL

Section 27.01. Recall Procedure. Any elective officer serving a four-year term as provided for in this charter may be removed from office by the voters of the county. The procedure to effect such removal shall be in accordance with this article.

A petition demanding that the question of removing such official be submitted to the voters shall be filed with the county clerk. Such petitions shall be signed by currently registered voters numbering not less than twenty percent (20%) of the voters registered in the last general election. (Amended 1984)

Section 27.02. Petitions. Petition papers shall be procured only from the county clerk, who shall keep a sufficient number of such blank petition papers on file for distribution as herein provided. Prior to the issuance of such petition papers, an affidavit shall be made by one or more voters and filed with the clerk, stating the name and office of the officer sought to be removed. (Amended 1984)

Section 27.03. Signatures. Each signer of a recall petition shall print and sign their name and shall place thereon after the name, social security number, place of residence and voting precinct. To each such petition paper there shall be attached an affidavit of the circulator thereof, stating the number of signers to such part of the petition and that each signature appended to the paper was made in the circulator's presence and is believed to be the genuine signature of the person whose name it purports to be, and that each signer understood it to be a recall petition of a specific elected officer. (Amended 1984)

Section 27.04. Filing and Certification. All papers comprising a recall petition shall be assembled and filed with the county clerk as one instrument within thirty (30) days after the filing, with the clerk, of the affidavit stating the name and office of the officer sought to be removed. Within ten (10) days from the date of the filing of such petition, the clerk shall determine the sufficiency thereof and attach thereto a certificate showing the result of his examination. If the clerk shall certify that the petition is insufficient, he shall set forth in the certificate the particulars in which the petition is defective, and shall return a copy of the certificate to the person designated in such petition to receive it. (Amended 1984)

Section 27.05. Supplemental Petitions. In the event the initial petition contained insufficient signatures, such recall petition may be supported by supplemental signatures of voters signed in the manner required in Section 27.03 of this article appended to petitions issued, signed, and filed as required for the original

petition at any time within ten (10) days after the date of the certificate of insufficiency by the clerk. The clerk shall within five (5) days after such supplemental petitions are filed make a like examination of them, and if his certificate shall show the same to be still insufficient, he shall return it in the manner described in Section 27.04 of this article to the person designated in such petition to receive the same, and no new petition for the recall of the officer sought to be removed shall be filed within one year thereafter. (Amended 1984)

Section 27.06. Recall Election. If a recall petition or supplemental petition shall be certified by the clerk to be sufficient, he shall promptly notify in writing the officer sought to be recalled of such action. If the official whose removal is sought does not resign within five (5) days after mailing of such notice, the clerk shall thereupon order and fix a day for holding a recall election. Any such election shall be held not less than seventy-five (75) nor more than ninety (90) days after the petition has been presented to the official, at the same time as any other special county or state election held within such period, but if no such election is to be held within such period, the clerk shall call a special recall election to be held within the time aforesaid. If less than fifty percent (50%) of the total number of voters registered in the last general election shall vote at such recall election, the officer sought to be recalled shall not be deemed recalled regardless of the outcome of the election. (Amended 1984)

Section 27.07. Ballots. The ballots at such recall election shall, with respect to each person whose removal is sought, submit the question: "Shall (name of person) be removed from the office of (name of office) by recall?" Immediately following each such question, there shall be printed on the ballots the two propositions in the order set forth: "For the recall of (name of person)." "Against the recall of (name of person)." Immediately to the right of the proposition there shall be designated spaces in which to mark the ballot FOR or AGAINST the recall. A majority vote shall be sufficient to recall such officer, subject to the provisions of Section 27.06 of this article. (Amended 1984)

Section 27.08. Succeeding Officer. The incumbent, if not recalled in such election, shall continue in office for the remainder of his unexpired term subject to the recall as before, except as provided in this charter. If recalled in the recall election, he shall be deemed removed from office upon the clerk's certification of the results of that election, and the office shall be filled as provided by this charter for the filling of vacancies of elected officials. The successor of any person so removed shall hold office during the unexpired term of his predecessor. (Amended 1984)

Section 27.09. Immunity to Recall. The question of the removal of any

officer shall not be submitted to the voters until such person has served six (6) months of the term during which he is sought to be recalled, nor, in case of an officer retained in a recall election, until one year after that election. (Amended 1984)

ARTICLE XXVIII
COST CONTROL COMMISSION

Section 28.01. There shall be a County Cost Control Commission composed of seven members not employed in government service. Three of the members shall be selected by the mayor, three by the council and the seventh shall be appointed by the selected six. If there is no agreement on the selection of the seventh member within thirty (30) days of the appointments of the six members, the seventh member will be selected by the mayor. (Amended 1988)

Section 28.02. Goal. The goal of the commission is to reduce the cost of county government while maintaining a reasonable level of public services. (Amended 1988)

Section 28.03. Term The term of the commission shall be coterminous with the term of the mayor. The mayor and council shall make their selection within forty-five (45) days of their inauguration. (Amended 1988)

Section 28.04. The commission shall review personnel costs, real property taxes, travel budgets, contract procedures; review with the aim of eliminating programs and services available or more efficiently supplied by other governments or organizations; eliminate or consolidate overlapping or duplicate programs and services; scrutinize for reduction any county operation. (Amended 1988)

Section 28.05. Reports. The commission shall prepare and advertise a written annual report summarizing its recommendations prior to the end of each calendar year. Thereafter, the commission may request that any of its recommendations be drafted in ordinance form for its introduction through the mayor. The mayor shall, with mayor's comments thereon and within thirty (30) working days of receipt, submit to the council for its immediate consideration all ordinances proposed by the commission. (Amended 1988, 1996)

Section 28.06 Rules and Regulations. The commission shall adopt rules and regulations relating to the operation and management of the commission in order that the commission can accomplish its goals and objectives. (Amended 1988)

Section 28.07. Appropriation. The mayor and council shall provide an annual appropriation sufficient to enable the commission to secure clerical help and pay other operational costs. The commission shall be provided with the latest mayor's annual report and the council's

latest audit report. The commission is empowered to secure from any department, agency, official or employee, any report or information the commission requests that is appropriate to its function. All such requests shall be made through the office of the mayor or the chairman of the council for information within their respective jurisdictions. (Amended 1988)

ARTICLE XXIX
SALARY COMMISSION

Section 29.01. Organization. The salaries of all councilmembers shall be established by an independent salary commission which shall consist of seven members. The mayor shall appoint three members, the council shall appoint three members, and the seventh member shall be appointed by the appointed six. If there is no agreement on the selection of the seventh member within forty-five days of the appointment of the sixth member, the seventh member shall be appointed by the mayor and confirmed by the council. (Amended 1988)

Section 29.02. Purpose and Duties.

A. The commission shall set salaries of councilmembers in accordance with the principles of adequate compensation for work performed, the preservation of a sensible relationship with the salaries of other county employees.

B. The commission shall review and recommend the salaries and minimum qualifications of all officers and employees included in Section 3-2.1 of the Kauai County Code 1987, as amended. (Amended 1988)

Section 29.03. Term. The term of the commission shall be conterminous with the term of the council. The mayor and council shall make their selection within forty-five days of their inauguration. (Amended 1988)

Section 29.04 Initial Commission. The initial commission shall be appointed for the term commencing December 1, 1988. (Amended 1988)

Section 29.05 Meetings; Rules. The commission shall meet at least once a year to set the salaries for councilmembers and recommend the salaries for all other elected officials and employees as specified in Section 29.02 of this charter. The commission shall establish its rules of procedures and adopt rules and regulations pursuant to law. (Amended 1988)

Section 29.06 Changes in Salary. No change in salary of councilmembers shall be effective during the term in which a change is enacted or for twenty-four months after a change is enacted, whichever is less. (Amended 1988)

Section 29.07 Administration and Operation. The mayor and council shall provide an annual appropriation sufficient to enable the commission to secure clerical assistance and pay other operational costs in the performance of its duties. (Amended 1988)

ARTICLE XXX
ELECTRIC POWER AUTHORITY

Section 30.01 Electric Power Authority. The Council may establish by ordinance an electric power authority corporation for the county, which shall be a body corporate and shall be responsible for the planning, development, production, purchase, transmission, and distribution of all electricity-related services by the county.

"Article XXX
ELECTRIC POWER AUTHORITY

Section 30.01. Electric Power Authority. The Council may establish by ordinance an electric power authority corporation for the county, which shall be a body corporate and shall be responsible for the planning, development, production, purchase, transmission, and distribution of all electricity-related services by the county.

If established by ordinance, all provisions of this Article XXX shall be included in the ordinance and no ordinances shall be enacted and no administrative rules shall be adopted which either expressly or by implication conflict with the provisions of this Article.

Sections 30.02 through 30.06 of this Article XXX shall be effective thirty (30) calendar days from and after the enactment of an ordinance establishing an electric power authority for the County of Kauai.

If established by ordinance, the authority shall operate as a separate unit of county government, except as otherwise provided in this charter. The authority shall be free from the jurisdiction, direction, and control of other county officers and of the council.

Notwithstanding any provision in the Charter to the contrary, the council may by ordinance enact any further provisions it deems necessary to implement this Article XXX including, but not limited to, provisions concerning the power authority's powers, duties, and liabilities, its organization and governing structure, the manner in which officers and employees are elected, appointed, or employed, and the manner in which rates are set and the authority's revenues are utilized.

Section 30.02. Board of Directors of the Electric Power Authority.

There shall be a board of directors of the electric power authority, which shall have exclusive jurisdiction, control, and policy-making responsibility over the authority and all of its operations and facilities.

The board shall have and may exercise all rights, powers, duties, privileges and immunities possessed by the county, which are or may be secured by law including, but not limited to, all powers and duties possessed by the county to construct, acquire, expand and operate the utility, and to do any and all acts or things that are necessary, convenient, or desirable in order to operate, maintain, enlarge, extend, preserve and promote an orderly, economic and business-like administration of the utility.

The board shall adopt articles of incorporation and by-laws consistent with all provisions of this Article XXX. Such articles and by-laws may be amended from time to time by the board; however, any such amendments shall be consistent with all provisions of this Article XXX. Such articles and by-laws shall also include provisions as are customary to set forth both the corporation's purpose and nature and the procedural matters necessary for its governance.

The board shall operate as a separate unit of county government, except as otherwise provided in this charter. Both the board and the authority shall be free from the jurisdiction, direction, and control of other county officers and of the council.

The board may sue or be sued in its own name. All liability for damage claims arising from the operations of the board and the authority shall be the responsibility of and be liquidated by the board from the appropriate funds of the authority.

Section 30.03. Organization of the Board.

A. Number of directors. The board shall consist of seven directors, one of whom shall be the chief executive officer of the authority, and six of whom shall be elected-at-large. All seven directors shall be voting members of the board. Charter Sec. 7.05K shall not apply to this Article XXX.

B. Election and Tenure of Directors.

1. Directors elected at-large. Directors elected at-large shall be elected at the next regularly scheduled general election after the enactment of the ordinance creating the authority.

2. Subject to the provision in paragraph D of this section that the terms of the first directors who have no licensing or education and experience qualification requirements shall be two

years, all directors shall serve terms of four years, unless they die, resign, or are removed from office pursuant to paragraph D of this section. The terms of all elected directors shall begin at twelve o'clock meridian on the first working day of December following their election.

3. Term limits of directors. No elected director shall serve as director for more than two consecutive full terms.

C. Vacancies. Vacancies shall be filled by the board for the unexpired term. No vacancy on the board shall impair the right of the remaining directors to exercise all the powers of the board.

D. Qualifications. All persons seeking positions as elected directors shall, upon filing for their candidacies, be citizens of the United States and registered voters in the County. In addition, three of the six elected directors shall possess the following additional qualifications upon filing for their candidacies.

Three of the six elected directors must either:

(1) Have been licensed by any state in the United States for a minimum of five years in engineering, accountancy, or law; or

(2) Have an undergraduate or graduate degree in business management or business administration from a university or college within the United States accredited by the Middle States Association of Colleges and Schools, North Central Association of Colleges and Schools, New England Association of Schools and Colleges, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, or the Western Association of Schools and Colleges and have worked in the field of business management or business administration for a minimum of five years.

All persons seeking positions as elected directors shall specify in their nomination papers whether they are seeking to be elected for one of the three director positions which have licensing or education and experience qualification requirements, or the director position which has no such qualification requirements.

All persons seeking director positions which have licensing or education and experience qualification requirements shall execute an affidavit stating that he or she has satisfied the qualification requirements for those positions. The person shall swear to the truth of the allegations by self-subscribing oath in the affidavit. The county clerk shall prescribe the form of the affidavit. If the clerk so desires or believes it to be expedient, the clerk may demand that the person furnish substantiating evidence to the allegations in

the person's affidavit. If the clerk determines that any person has not satisfied the licensing or education and experience requirements of this paragraph D, the person shall be deemed unqualified for the position sought.

With respect to any director elected to fill a position having licensing or education and experience requirements, the following rule shall apply. If, at any time, it is learned that any such director has not satisfied these requirements, the board shall immediately remove the director from office. Any vacancies arising from such a removal shall be filled by the board for the unexpired term; provided that all persons appointed by the board as a result of such a removal shall satisfy, at the time of their appointment, the qualification requirements for such elected directors.

For the director positions which have no licensing or education and experience qualification requirements, the three candidates receiving the highest number of votes shall be elected to those three positions. The terms of the first directors who have no licensing or education and experience qualification requirements shall be two years.

For the three director positions which have licensing or education and experience qualification requirements, the three candidates receiving the highest number of votes shall be elected to those three positions.

The qualification requirements of this paragraph D shall not apply to the chief executive officer of the authority.

No director may hold any county office, be an officer or employee of the county government, or have been an officer or employee of county government within twelve months of the date that the director's term of office is effective. No director may conduct any business whatsoever with the authority.

A director convicted of the commission of a felony shall be removed from office when convicted of the felony.

E. Officers. The board by majority vote shall elect from among its members a chairman who shall preside over the meetings of the board, and a vice-chairman who shall act for the chairman during absences, and may elect from among its members one or more vice-presidents, a secretary and a treasurer and assistant secretaries and treasurers. The board shall prescribe and may amend the duties of all such officers.

Election of officers shall be held at the first regular meeting at which all members are present following the appointment or election of a new director for a full term, but not later than the

second meeting following the appointment or election.

F. Meetings. The board shall take no action except by the affirmative vote of at least four directors, who shall constitute a quorum.

The board shall meet at least once each month at such times as the board may prescribe.

Except where meetings closed to the public are permitted under applicable law, all board meetings shall be open to the public. Agendas shall be posted pursuant to applicable law.

G. Errors and omissions. The authority shall hold harmless and indemnify its director, chief executive officer, agents, and employees to the full extent permitted by law, including, but not limited to, all liabilities, expenses, and losses incurred by its directors, chief executive officer, agents, and employees in connection with acts of error or omissions, other than willful violations of laws, committed within the scope of their duties, and shall defend, at the authority's expense, all related claims and suits.

Section 30.04. Organization of the Authority.

A. Divisions. The authority shall keep separate funds and accounts as required by the uniform systems of accounts for gas, electricity, water, communications, and other utilities, as promulgated by the Hawaii Public Utilities Commission or the Federal Energy Regulatory Commission.

B. Policy. The board shall establish an annual budget and written policies governing utility operations to cover such areas as employees' duties, customer rates, service rules and termination procedures, expenditures of funds, long-range planning, and other appropriate activities.

C. Chief Executive Officer. The board shall appoint and the authority shall employ a president and chief executive officer of the authority who shall be qualified by training and experience for the overall management of the utility. The chief executive officer shall serve according to the terms of an employment contract to be executed between the officer and the board, and shall have such authority as delegated by the board. The salary of the chief executive officer shall be fixed by the board.

The chief executive officer shall, subject to board approval, (1) determine the number of employees necessary for the operation of the utility, and (2) fix their duties and compensation. The chief executive officer shall have control of all actual construction and

repairs, the immediate management of operation of the utility, and the enforcement and execution of all rules and regulations, programs, plans, and decisions made or adopted by the board. The chief executive officer shall maintain suitable permanent records regarding actions taken. The chief executive officer shall prepare plans and specifications, take bids, and let contracts, subject to the approval of the board. The chief executive officer shall prepare and submit to the board periodic reports on the utility's compliance with local, state, federal laws in the areas of safety, environmental matters, and civil rights.

D. Other employees. There shall be such other officers and employees of the authority as may be provided by the board. The officers and employees shall be appointed and removed by the chief executive officer subject to the provisions of applicable local, state and federal laws or binding contracts entered into with employees and the authority, or both.

E. Surety bonds. The board may require surety bonds for any of the officers and employees of the authority in such amounts as the board deems necessary. The premiums for the bonds shall be paid by the authority in the same manner as any other operating expense.

Section 30.05. Powers and Duties of the Board.

A. Real estate and contracts. The board, in the efficient and economical operation of the authority, may, as state law permits: (1) sell its products and services to the public and private corporations and to other consumers; (2) construct and operate plants and operate distribution system, transmission lines, and other facilities; (3) purchase real estate and franchises; and (4) enter into all contracts, leases, and agreements in furtherance thereof.

B. Joint operations with others. The board may enter into contracts and agreements with any public or private corporation or any individual, both inside and outside the boundaries of the county and state: (1) for the joint use of property belonging either to the authority or to the other contracting party or jointly to both parties; and (2) for the joint acquisition of real and personal property, rights and franchises, and the joint financing, construction, and operation of plants, buildings, transmission lines, and other facilities.

C. Eminent domain. The board may enter upon any land or water for the purpose of making surveys and may exercise the right of eminent domain in like manner as the county, and to the same extent as the county, when the board determines that public necessity or convenience requires such action.

D. Use of thoroughfares for utility installations. The board

may use the ground over, under, or along any road, railway, highway, street, sidewalk, thoroughfare, alley, or waterway in the operations of the authority, but shall in all cases and subject to the applicable general regulations of the county and state cause the surface of the public way to be restored to its usual condition.

E. Rates. The board shall fix rates and other charges to be assessed against each customer class for electrical services rendered by the authority. Rates and other charges for each customer class shall be based on the cost of the service provided and be just, reasonable, compensatory, and without undue preference or discrimination.

The board may require reasonable deposits as security for the payment of charges for utility services and may provide for the return of the deposits when satisfactory consumer credit has been established.

F. Authorization for expenditures. No money shall be drawn from the funds of the authority nor shall any obligation for the expenditure of money be incurred except in conformity with authorization by the board. No claim against the authority shall be paid unless evidenced by a voucher approved by the chief executive officer or by some other employee to be designated by the chief executive officer.

G. Use of utility funds. All utility revenues shall be directed to the provision of utility services and not applied to the general fund of the county, unless the transfer of revenues constitutes a payment in lieu of taxes. Except for those taxes that are assessed pursuant to county, state, or federal law, no other taxes or fees, or both, shall be assessed against the authority. Nothing in this section G. shall prohibit the authority from entering into such business arrangements or contracts, or both, with the county as the board may deem advisable.

H. Bond issues and other indebtedness. Subject to applicable state laws, the board may authorize the issuance and sale of revenue bonds or other types of indebtedness necessary to finance the acquisition, construction, improvement, and extension of the utility facilities owned by the county or authority, including facilities owned or operated jointly with others. Use of general obligation bonds may entail approval by the county council.

I. Short-term indebtedness. The board may borrow money for periods not to exceed three years and may issue negotiable notes, payable from the revenues of the authority, as evidence of the indebtedness. The action of the board may be by resolutions that may be adopted at the same meetings at which the resolutions are introduced and shall take effect immediately upon adoption.

J. Investment of surplus funds. The board may invest surplus funds of the authority in securities that are deemed safe and as may be authorized by specific action of the board.

K. Delegation of powers. The Board shall retain powers relating to budget approval, rate setting, and long-term indebtedness; however, it may from time to time delegate in writing other powers to officers or employees responsible to it, as may be necessary.

Section 30.06. General Provisions.

A. Disposition of Power Authority. The county council shall have no authority to cease to operate, or to sell, lease, abandon, or in any other way dispose of the electric power authority under this Article XXX, without first holding a public hearing during which a certified public accountant shall present a report to the county council concerning the revenue that has been earned by the electric power authority throughout the county's ownership, and an analysis of the revenues to be lost by the county through the proposed sale of the electric power authority.

There shall be two council votes at least six (6) calendar months apart to call a referendum election concerning a sale of the authority. The county shall hold a referendum election which must be passed by a majority of the voters, voting at the election, to approve a sale. The referendum election shall be held at the next regularly-scheduled general election.

B. Existing obligations. Contracts and obligations relating to the electric power authority which were incurred prior to the effective date of sections 30.02 through 30.06 shall not be impaired and shall be binding upon the board insofar as they apply to the authority.

C. Repeal of prior County charter provisions and ordinances. All county charter provisions and ordinances and parts of county charter provisions and ordinances inconsistent with any provision of this Article XXX are hereby repealed; however, all county charter provisions and parts of county charter provisions that are not inconsistent with any provision of this Article XXX including, but not limited to, Article XX of the charter, shall apply to this Article XXX.

D. Severability of provisions. If any provision of this Article XXX, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the sections, subsections, and parts thereof of Article XXX are severable."

(2002 Amendment)

This Amendment to Article XXX of the Charter of The County of Kauai was duly adopted by the voters at the November 5, 2002 General Election.